

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The South Carolina
Workers' Compensation Commission

Honorable Melody James, Commissioner
Honorable Gene McCaskill, Commissioner
Honorable Aisha Taylor, Commissioner

WCC File No. 9832206

Appellate Case No. 2017-001804

RECEIVED
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SC Court of Appeals

Stella Mae Richardson,

Appellant,

v.

Yuasa Exide, Inc., Employer, and Great American Insurance Company of
NY, Carrier,

Defendants,

Of which Yuasa Exide, Inc., Employer, is

Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Stella Mae Richardson
5070 Ridge Street
Dalzell, SC 29040
Appellant, Pro Se

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Robert P. Gruber (SC Bar No. 15581)
Catherine H. Chase (SC Bar No. 74593)
25 Calhoun Street, Suite 400 (29401)
P.O. Box 993
Charleston, South Carolina 29402
(843) 720-5488
sbrown@ycrlaw.com
rgruber@ycrlaw.com
cchase@ycrlaw.com
Attorneys for Yuasa Exide, Inc.

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Stella Mae Richardson,
Claimant,

vs.

Yuasa Exide, Inc.,
Employer,

Great American Insurance Company of
NY,
Carrier,
Defendants.

STATEMENT OF THE CASE AND OF THE FACTS

The parties attended mediation before H. Mills Gallivan on October 31, 2014 and settled this case on a clincher for \$20,000.00. Mr. Gallivan submitted his Form 70 Mediation Report on

November 3, 2014 and the parties entered a clincher agreement which was approved by the Commission on December 10, 2014 (attached).

Mr. Brooks submitted a Motion to be relieved as Counsel in this matter which was granted on June 3, 2015. The claimant filed a Pro Se Form 50 on June 18, 2015 alleging an illness due to invasive ductal carcinoma (breast cancer) and requested compensation for total disability and medical care and treatment. The employer/carrier timely filed a Form 51 alleging that the claimant's breast cancer was not causally related to her alleged injury/exposure and also alleging every available defense (affirmative and otherwise) available under the South Carolina Workers' Compensation Act and specifically the occupational disease portion of the statute. Most importantly, however, the employer/carrier alleged that the claimant had clinchered her case on December 10, 2014 and that the claimant, therefore, was not entitled to any further benefits whatsoever pursuant to the terms of the claimant agreement. The procedural history of this case following the claimant's June 18, 2015 F50 follows.

First Hearing before Commissioner Campbell

The parties appeared before Commissioner Campbell on August 10, 2015 as scheduled. The parties had an extensive pre-trial conference with Commissioner Campbell. The employer/carrier submitted a pre-hearing brief and APA submissions consisting of the Clincher Agreement the parties signed and which the Commission approved, dated December 10, 2014 and medical records documenting the claimant's physical condition. The employer carrier argued that the claimant's claim was closed as a result of the clincher, that the South Carolina Workers' Compensation Commission had no jurisdiction to consider the claimant's Form 50; the issues raised in the claimant's Form 50 were barred by the doctrine of *Res Judicata* and that the clincher

agreement approved by the Commission on December 10, 2014 specifically closed both the claimant's alleged date of injury (November 10, 1997) and any other date of injury which could be alleged in the future.

The claimant testified that she was informed by her attorney at the time, Mr. Charles Brooks, the clincher agreement that she signed in December of 2014 could close out any further entitlement to benefits that the claimant may otherwise have. She also testified that she was not aware in December of 2014 that she may have breast cancer. The claimant did not present any evidence (medical or otherwise) of any causal connection between alleged lead exposure and breast cancer. Commissioner Campbell issued his order on December 7, 2015 and made the following findings of fact and conclusions of law:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter and the parties to the extent necessary to determine whether or not the case may be re-opened post settlement;
2. The claimant originally filed a claim seeking benefits as the result of a work related occupational exposure in 2009;
3. The claimant was originally represented by the Steinberg Law Firm; however, the claimant was no longer represented by the Steinberg Law Firm by December 6, 2013 when she filed her first *pro se* Form 50 hearing request;
4. The claimant was represented by Charles Brooks as of April 3, 2014, and this representation lasted until June 3, 2015 when Mr. Brooks was relieved of counsel by Order of the Commission;
5. The parties attended a mediation of this case on October 31, 2014 before H. Mills Gallivan. The claimant was represented by Mr. Brooks throughout the mediation;

6. The parties settled the claimant's claim at the aforementioned mediation for \$20,000.00 on a full and final, doubtful and disputed clincher, which was approved by the Commission on December 10, 2014;

7. The settlement appears to have been entered into willingly and voluntarily and with advice of counsel;

8. No party attempted to "appeal" the clincher agreement; as such, it is a final order and is the law of the case;

9. Based upon statements made in the pre-trial conference by the claimant, she had competent representation at the time of the mediation and settlement of her claim, and she was informed that a settlement could end her entitlement to any further benefits;

10. The claimant has made no allegation and has presented no evidence that she was defrauded or otherwise induced to enter a settlement against her will or that she was not of sound mind and body when she entered into the settlement agreement;

11. The attached clincher agreement specifically states that the claimant will no longer be entitled to any further benefits which may otherwise have been available under this claim;

12. The attached clincher agreement specifically "releases and discharges the employer\carrier from any and all work related injuries which may have occurred during her employment with the employer. . .";

13. The claimant willfully and voluntarily and in exchange for valuable consideration released her right to any further benefits as a result of this or any other claim she may have against the employer\carrier; therefore, the South Carolina Workers' Compensation Commission

has no jurisdiction to award additional benefits in this matter or to consider additional claims between these parties.

Commissioner Campbell made the following Conclusions of Law as part of his December 7, 2015 Order.

1. Pursuant to *S.C. Code Ann. Reg. 67-801E (1990)*, a “clincher agreement” is a full and final settlement agreement that “relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses.”

2. Pursuant to *Singleton v. Young Lumber Company*, 236 S.C. 454, 114 S.E.2d 837 (1960) and *Spivey v. Carolina Crawler*, 367 S.C. 154, 624 S.E.2d 435 (Ct. App. 2005), [a] clincher or settlement agreement, when approved by the Commission, has the same effect as an unappealed Order or Decision or award of the Commission and is binding upon the parties.

Claimant's Appeal of Commissioner Campbell's Order to the Appellate Panel

Claimant timely filed a Form 30 appeal to the Full Commission on December 21, 2015 in which she did not request oral argument. This matter was considered by the Appellate Panel of the South Carolina Workers' Compensation Commission without oral argument during the March 2016 term, pursuant to a Form 30 timely filed by the Appellant on December 21, 2015.

The Appellate Panel reviewed the record, Commissioner Campbell's Order and the claimant's appeal, and made the following findings of fact and conclusions of law:

1. We conclude as a matter of law that all parties to this proceeding are subject to and bound by the terms and provisions of South Carolina Workers' Compensation Act;

2. We conclude as a matter of law that, when reviewing evidence in the award of the Single Commissioner, the Full Commission makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984); S.C. Code Ann. § 42-17-50 (1985).

3. We conclude as a matter of law that an administrative order may be reversed or modified if substantial rights of the appellant are prejudiced because the administrative findings are: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) affected by other error of law; (4) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (5) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. S.C. CODE ANN. § 1-23-380 (1986).

Based upon its findings of fact and conclusions of law, the Appellate Panel Ordered that this matter should be scheduled for a *de novo* hearing and that the hearing commissioner "shall open the record, take testimony and make any findings of fact and conclusions of law consistent with the evidence submitted"

REMAND DE NOVO HEARING BEFORE COMMISSIONER CAMPBELL

August 17, 2016 part of Commissioner Campbell's remand hearing

The first part of the *de novo* hearing before Commissioner Campbell took place on August 17, 2016. Commissioner Campbell reminded Ms. Richardson that she had the right to hire an attorney to which Ms. Richardson responded that she could not find an attorney (Hearing Transcript August 17, 2016, pg 3). Commissioner Campbell then asked each party to put their respective positions on the record.

On behalf of the employer/carrier, defense counsel stated that the clincher agreement is the law of the case and the South Carolina Workers' Compensation Commission has no jurisdiction to hear Ms. Richardson's challenge. Defense counsel stated that, should the Commission decide to hear this matter, the clincher agreement speaks for itself and Ms. Richardson had an attorney to represent her and that she had offered no justification to look past the terms of the clincher document itself. Ms. Richardson's F50 states that she should receive additional benefits to treat her breast cancer, which was diagnosed post settlement. Defense counsel argued that this was not a reason to re-open the case or set aside the clincher and Ms. Richardson had not alleged fraud, deceit lack of capacity or estoppel and, therefore, the Commission could not re-open her case. Finally, defense counsel requested that if the Commission did conclude that Ms. Richardson could re-open her claim that the employer and carrier receive a credit for the \$20,000.00 already paid to Ms. Richardson and that the case be scheduled for a merits hearing compensability, causation and all other issues.

Ms. Richardson alleged that her case should be reopened because she had been confined to a mental institution in the past, she was brain damaged, had breast cancer and numerous other medical problems which were caused by lead poisoning. Commissioner Campbell asked Ms. Richardson if she had any evidence that she was not mentally capable of making the decision to enter into a clincher agreement at the time that she settled her case. Ms. Richardson said that she did, and she also pointed to a report from Dr. Edward Baker dated January 25, 2013 which stated that her lead exposure caused her 10% impairment to her brain and 10% impairment to her heart. Defense counsel stated that Dr. Baker's report pre-dated the mediation by more than a year, giving Ms. Richardson plenty of time to incorporate Dr. Baker's report into her settlement negotiations. Defense counsel objected to Ms. Richardson's use of medical records to establish causation because there had been no merits hearing and neither party had taken the opportunity to conduct full discovery. It was improper to consider causation at this point in the proceeding. Defense counsel concluded by pointing out that Ms. Richardson's main argument was one of incapacity, and that whether or not Ms. Richardson had been institutionalized in the past was

immaterial to that issue as there was no evidence that Ms. Richardson lacked the mental capacity to enter into her clincher agreement on the day she settled her case or at any time during the post settlement process. Ms. Richardson then testified that she "wasn't thinking clearly that day because that attorney was pushing [her] to sign off on the document and saying that if [she] didn't sign the document there's going to be all kind of problems and issues and on top of that he forged my name and he sent him a piece of paper telling the lawyer to make sure [she] signed [her] paper" (Hearing Transcript, Pg. 20, Lns 21-25; Pg. 21, Lns. 1-4).

Ms. Richardson allowed defense counsel to review 282 pages of documents that she submitted to Commissioner Campbell, and the parties went off the record. When the hearing reconvened, Commissioner Campbell stated that the purpose of the hearing was to address the issue of claimant's mental competency to enter into a Clincher Agreement at the time the case was settle. Commissioner Campbell asked Ms. Richardson again if she had any evidence relevant to that issue. Ms. Richardson referred to an inpatient admission to Richland Springs hospital from January 2, 1998 until January 12, 1998 and her award of SSDI dated April 22, 2002. Defense counsel responded that all of that evidence far predated the October 2014 mediation and there was still no medical evidence that Ms. Richardson lacked the mental capacity to settle her case. Ms. Richardson then produced a letter dated September 5, 2012 and written by Vernon Dunbar to David Pearlman and Malcolm Crosland and copied to Virginia Crocker, then Judicial Director of the Commission, in which Mr. Dunbar stated that he could not mediate Mr. Richardson's claim because he could not locate her personnel file. He also opined that "because Ms. Richardson suffers from schizophrenia it appears that a guardian *ad litem* should be appointed. . . I am concerned that if the case is successfully resolved, she may not be capable of protecting her monetary award." (See letter from Vernon Dunbar to David Pearlman and Malcolm Crosland dated September 5, 2012 contained in the Commission's file and contained in the 282 pages of documents which claimant submitted at the hearing). Ms. Richardson argued that Mr. Dunbar's letter was proof that she lacked the mental capacity to settle her case. Defense counsel stated that Mr.

Dunbar's opinion was not medical evidence and that his only concern was that she may not be able to handle a monetary award—not that she could not aid in the prosecution of her case or decide whether or not to settle her case. Ms. Richardson then testified that her lawyer forged her name and lied to her. The Commission reminded Ms. Richardson that this was not the proper forum for such an issue. Ms. Richardson testified that her attorney, Charles Brooks forged her name on the settlement check and F19 without her authorization and she testified that she never signed the formal clincher.

Commissioner Campbell adjourned the hearing and instructed defense counsel to depose Mr. Charles Brooks after which the hearing would re-convene to determine whether the claimant received adequate assistance from her legal counsel (Mr. Charles Brooks) and whether or not she had the mental capacity to settle her case.

Charles Brooks' Deposition

The parties took Charles Brooks' deposition on October 3, 2016. Mr. Brooks testified that he started representing Ms. Richardson in this matter in the spring of 2014 (Deposition of Charles Brooks, Pg. 8, lns. 12-16). Mr. Brooks testified that, in addition to his representation in this matter, he represented Ms. Richardson in a slip and fall injury she sustained at Lowes. Ms. Richardson provided Mr. Brooks with her medical bills, and Mr. Brooks was able to obtain a small settlement for Ms. Richardson (Deposition of Charles Brooks, Pg. 7, lns 1-25). Mr. Brooks described Ms. Richardson as being no different from any of his other clients as far as mental stability or her ability to understand events or issues in her case. She would frequently call his office to check the status of her case, she brought her workers' compensation file to Mr. Brooks and had frequent contact with his office staff (Deposition of Charles Brooks, Pg. 11, Lns. 7-25; pg. 12, lns. 1-8, lns 9-25).

Mr. Brooks discussed the October 31, 2014 mediation as being similar to other mediations (Deposition of Charles Brooks, Pg. 17, lns. 17-25). He and Ms. Richardson "started high," and negotiated from to an eventual settlement. Mr. Brooks testified that he, and Mills Gallivan, explained to

Ms. Richardson that her case had some "difficulties" and that her case was different from some of the larger Exide settlements because she did not have kidney problems. Mr. Gallivan confirmed to Mr. Brooks and Ms. Richardson that kidney problems "drove" some of the larger settlements in the past (Deposition of Charles Brooks, Pg. 18, Lns. 1-15): When the Defendants made the \$20,000.00 offer, Mr. Brooks and Mills Gallivan explained to Mr. Richardson that she had a "bird in the hand" and she could accept the \$20,000.00, or she could go to a hearing and receive less money or no money. Based upon discussions with Mills Gallivan, Mr. Brooks recommended to Ms. Richardson that she accept the \$20,000.00 settlement offer. (Deposition of Charles Brooks, Pg. 20-22). Ms. Richardson questioned whether or not she should settle at that point because she was "not sure" if she had cancer. Mr. Brooks testified that he explained to Ms. Richardson that she would need medical evidence linking her cancer to lead exposure and that she never provided that evidence (Deposition of Charles Brooks, Pg. 23, Lns 1-25). Mr. Brooks also testified that he explained to Ms. Richardson that her case would be "over" if she accepted the \$20,000.00 and clinched her case (Deposition of Charles Brooks, Pg. 24). Ms. Richardson accepted the \$20,000.00 settlement offer to clinch her case and the parties signed a handwritten settlement document which stated that the case was settled for \$20,000.00 on a doubtful and disputed clincher and that a more formal settlement agreement would follow (Deposition of Charles Brooks, Pg. 25 and Exhibit #1 to Deposition of Charles Brooks. The claimant reviewed and signed the formal clincher agreement with her attorney on December 5, 2016. Mr. Brooks testified that Ms. Richardson also signed a "Specific Power of Attorney to Endorse and Deposit Settlement Check" on December 5, 2016, at the same time that she signed the formal clincher agreement (See Deposition of Charles Brooks, Pg. 46, Lns 5-22; and Exhibit #2 of Deposition of Charles Brooks, October 3, 2016). Mr. Brooks, returned the formal clincher signed by the claimant to defense counsel on December 5, 2014, and defense counsel sent the clincher to the South Carolina Workers' Compensation Commission on December 8, 2016 (See Deposition of Charles Brooks, Pg. 39, Lns. 10-25; pg. 40, Lns. 1-3, and please see Commission's file which contains defense counsel correspondence to Commission dated December

8, 2016 and attaching clincher agreement). The Commission's file reflects that the clincher was approved on December 10, 2014. Mr. Brook's testified that the insurance carrier for the employer issued the \$20,000.00 settlement check on December 16, 2014 (*See* Deposition of Charles Brooks Exhibit #3). Mr. Brooks, received the settlement check and F19 on December 23, 2014 via overnight mail and Mr. Brooks endorsed the settlement check and F19 on December 23, 2014 in accordance with his Special Power of Attorney (*See* Deposition of Charles Brooks, Pg. 47, Lns. 13-25; Pg. 48, lns. 1-25; pg 49, lns 1-14).

Upon cross examination by Ms. Richardson, Mr. Brooks acknowledged that he asked Ms. Richardson to sign a Special Power of Attorney so that he could endorse her settlement check when it arrived. He also acknowledged that the Special Power of Attorney erroneously claimed that she no longer lived in Sumter County (Deposition of Charles Brooks, pg. 65, lns. 15-25; pg. 66, lns. 1-8). Mr. Brooks also acknowledged that Ms. Richardson provided him with a trove of documents to assist with her case (Deposition of Charles Brooks, Pg. 57, lns. 10-25).

November 10, 2016 part of Commissioner Campbell's remand hearing

The parties reconvened the hearing on November 10, 2016. Ms. Richardson waived her right to counsel (Hearing Transcript, pg 21, lns. 1-15). Ms. Richardson testified that she did not have the mental capacity to settle her case and that she does not comprehend well and that she is confused by things that are written (Hearing Transcript, November 10, 2016, Pg. 18, lns 12-25). She testified that she was very poorly represented by Charles Brooks because he did not understand the process of a workers' compensation case and he did not know her doctors or her medical history (Hearing Transcript, Pg. 30, lns. 5-11). Ms. Richardson also testified that defense counsel and Charles Brooks were trying to decide what was best for her, "but nobody was talking to me asking me what was best for me, what was best for Stella" (Hearing Transcript, Pg. 31, lns. 15-25). Finally, Ms. Richardson testified that she did not

remember signing the formal Clincher agreement (Hearing Transcript, pg. 22, lns. 9-22), and she restated her positions as outlined in the August 17, 2016 hearing.

The undersigned Commissioner listened to statements made by the parties and reviewed the attached clincher agreement and makes the following findings of fact based upon the preponderance of the evidence:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter and the parties to the extent necessary to determine whether or not the case may be re-opened post settlement;
2. The scope of this hearing is limited to determining whether or not the claimant has produced sufficient evidence to re-open her workers' compensation claim to seek additional benefits and/or set aside her clincher consistent with the instructions of the appellate panel.
3. The undersigned makes no findings with regard to the underlying compensability of the claimant claim or medical causation of her various medical problems as those issues are not before the Commission;
4. The claimant originally filed a claim seeking benefits as the result of a work related occupational exposure in 2009;
5. The claimant was originally represented by the Steinberg Law Firm; however, the claimant was no longer represented by the Steinberg Law Firm by December 6, 2013 when she filed her first *pro se* Form 50 hearing request;
6. The claimant was represented by Charles Brooks as of April 3, 2014, and this representation lasted until June 3, 2015 when Mr. Brooks was relieved of counsel by Order of the Commission;

7. The parties attended a mediation of this case on October 31, 2014 before H. Mills Gallivan. The claimant was represented by Mr. Brooks throughout the mediation;
8. The parties settled the claimant's claim at the aforementioned mediation for \$20,000.00 on a full and final, doubtful and disputed clincher, which was approved by the Commission on December 10, 2014;
9. The settlement appears to have been entered into willingly and voluntarily and with advice of counsel. This finding is based upon Ms. Richardson's having appeared at mediation on 10/31/2014 and her having signed a handwritten document memorializing the settlement terms (Hearing Transcript, November 10, 2016, pg. 35, lns. 18-21);
10. I find unpersuasive Ms. Richardson's testimony that she did not sign her clincher agreement, or that she does not remember signing her clincher agreement. Ms. Richardson claims that she did not sign the formal clincher (the "Order"), and that the only settlement document she signed was the informal handwritten memorandum (Hearing Transcript, pg. 38). However, Ms. Richardson acknowledged in her deposition dated July 29, 2015 that she spoke with Mr. Brooks in December of 2014 about her case and the settlement, that Mr. Brooks recommended that she "sign the papers," and that "by him being my attorney, I listened to what he said." (Claimant's deposition, July 29, 2015, Pg. 8, lns. 4-25; Pg. 9, lns 1-3). Her having signed the clincher agreement in December 2014 (December 5, 2014) is consistent with other evidence presented at the hearing and during Mr. Brook's deposition. Mr. Brooks acknowledges receiving the clincher agreement on December 5, 2014. He also testified that that he reviewed the

clinchier with Ms. Richardson on December 5, 2014 together with a Special Power of Attorney. Finally, the Commission's file shows that Defense counsel mailed the signed clincher to the Commission for approval on December 8, 2014 and the Commission stamped it approved on December 10, 2014. Although Ms. Richardson claims to not remember signing the clincher on December 5, 2014 (or any other day), she acknowledges that she signed the Special Power of Attorney on December 5, 2014. I find that the timeline supports Mr. Brook's testimony more so than it does Ms. Richardson's testimony. I find that Ms. Richardson's deposition testimony is more consistent with Mr. Brook's testimony than her own hearing testimony. Therefore, I find that the preponderance of the evidence support's Mr. Brook's testimony that Ms. Richardson did sign her clincher agreement on December 5, 2014;

11. I find that Ms. Richardson possessed the mental capacity to enter into an agreement to clincher this workers' compensation claim. This finding is based upon there being *no medical evidence* in the record *at all* indicating that Ms. Richardson lacked the mental capacity at the time she settled her workers' compensation case. The medical evidence indicates that she placed herself into inpatient psychiatric care at Richland Memorial Hospital on January 7, 1998 until January 12, 1998 (APA Pg. 515-526). She was diagnosed at that time with psychosis, schizophrenia and obsessive compulsive disorder (*Id*). There is no record of her having been admitted to any psychiatric facility since that time, and there is no evidence that she has ever been medically or legally unable to handle her own affairs. Mr. Richardson explained in her deposition taken on July 29,

2015 that Mr. Brooks told her that she may not "go back and get anything" once her workers' compensation case was settled (Claimant's deposition Pg. 7, lns. 2-8). Mrs. Richardson also testified at her deposition that she discussed her settlement with Mr. Brooks in December 2014, and that she discussed her concerns with him, that he recommended she settle her case anyway and she accepted his advice (Claimant's deposition, pg. 8, lns. 1-15; pg. 9, lns. 1-3). This testimony indicates that Ms. Richardson understood the settlement proceedings and decided voluntarily to settle her case. Furthermore, Ms. Richardson has represented herself in this matter and shows a clear understanding of the proceedings and requirements. (See entire transcript of August 17, 2016 hearing). I base this last finding upon my personal observations of Ms. Richardson as well as her testimony at each of the hearings.

12. I find that Mr. Charles Brooks provided appropriate and adequate assistance to Ms. Richardson. Mr. Brooks represented Ms. Richardson for a period of about fourteen (14) months from April 2014 when he was hired until June 3, 2015 when Mr. Brooks filed a Motion to be Relieve as Counsel. I based this finding upon the Commission's file and upon Ms. Richardson's testimony at the November 10, 2016 hearing. During this time, Mr. Brook's represented Ms. Richardson in a slip and fall incidence which occurred at Lowes, and obtained a small settlement for her (Deposition of Charles Brooks, pages 7 & 8). Mr. Brooks took this workers' compensation case to mediation and secured a \$20,000.00 settlement for her; which she accepted (Deposition of Charles Brooks, page 9). Based upon Mr. Brooks' exchanges with Ms. Richardson during his deposition, it is clear to the

undersigned that he followed a process for concluding her workers' compensation settlement, including having her sign a Special Power of Attorney so that she would not have to return to his office to endorse her settlement check (Deposition of Charles Brooks, pg. 46, lns 5-22). It is, likewise, clear that Mr. Brooks considered the Medicare Set Aside issue and understood that the settlement amount fell below CMS review threshold for an MSA (Deposition of Charles Brooks, Pg. 27, lns 1-25; p. 28, 1-25). Based upon the above findings, the undersigned finds that Charles Brooks provided appropriate representation to Ms. Richardson.

13. Finally, I find no impropriety on behalf of defense counsel. It appears from the undersigned that defense counsel treated the claimant with respect and courtesy.
14. Based upon the above findings, I find that the claimant, Stella Mae Richardson, has failed to carry her burden of proving fraud, lack of capacity, estoppel, deceit or any other circumstance or condition which could give the Workers' Compensation Commission justification to re-open her claim and/or set aside her clincher agreement;
15. Based upon the forgoing findings, I find that the claimant, Stella Mae Richardson, is owed no additional benefits in this matter.

CONCLUSIONS OF LAW

1. Pursuant to *S.C.Code Ann. Reg. 67-801E (1990)*, a "clincher agreement" is a full and final settlement agreement that "relieves the employer

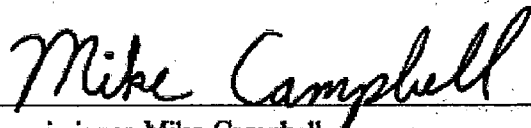
and its representative from any further responsibility for payment of compensation or medical expenses.”

2. Pursuant to *Singleton v. Young Lumber Company*, 236 S.C. 454, 114 S.E.2d 837 (1960) and *Spivey v. Carolina Crawler*, 367 S.C. 154, 624 S.E.2d 435 (Ct. App. 2005), [a] clincher or settlement agreement, when approved by the Commission, has the same effect as an unappealed Order or Decision or award of the Commission and is binding upon the parties.

ORDER

Based upon the forgoing findings of fact and conclusions of law, the claimant’s request for further benefits is denied, and no further benefits are owed for this matter.

AND IT IS SO ORDERED!



Commissioner Mike Campbell

Columbia, South Carolina

Date: January 25, 2017

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 9832206

STELLA MAE RICHARDSON,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	R. MICHAEL CAMPBELL, II
v.	)	
	)	<u>TRANSCRIPT</u>
YUASA BATTERY,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
GREAT AMERICAN INSSURANCE)	)	
COMPANY,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
12:00 P.M., THURSDAY, NOVEMBER 10, 2016, SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION, COLUMBIA,
SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

STELLA MAE RICHARDSON, PRO SE

FOR THE DEFENDANT

ROBERT P. GRUBER, ESQUIRE
YOUNG, CLEMENT, RIVERS, LLP
25 CALHOUN STREET, SUITE 400
CHARLESTON, SOUTH CAROLINA 29401
843-577-4000

REPORTED BY

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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EXHIBITS

(No Exhibits Proffered)

CORA ELLIS BRUTON - COURT REPORTER
131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

SUPP ROA 019

1 THE COURT: Today's hearing date is November the
2 10th, 2016. This is South Carolina Workers'
3 Compensation Case File Number 9832206. This is the
4 case of the Claimant Stella Mae Richardson, who is pro
5 se. The Employer is Yuasa Battery. The Carrier is
6 Great American Insurance Company; both represented by
7 Attorney Robert P. Gruber.

8 The date of accident is August 5th, 1998. The
9 average weekly wage is \$491.63 with a corresponding
10 compensation rate of \$327.77.

11 APAs have been submitted. Are there any
12 objections to APAs, jurisdiction, venue or any other
13 items?

14 MR. GRUBER: None from the Defense, Your Honor.

15 MS. RICHARDSON: Explain that to me?

16 THE COURT: Do you have any objections to the
17 APAs, the paperwork that Mr. Gruber handed up that he
18 had -- do you have stuff that you want to hand up to
19 me?

20 MS. RICHARDSON: Talking about the wages too --

21 THE COURT: No. I think we -- I think we don't
22 -- I don't think we need to worry about the wages
23 since you had that form that we were referring to that
24 reflected that. That's really all the information I
25 needed on as far as that goes, ma'am.

1 MS. RICHARDSON: Okay.

2 THE COURT: Do you have anything else that you
3 need to hand up to me at this time for anything?

4 MS. RICHARDSON: Oh yeah. From anything like
5 medical or anything?

6 THE COURT: Yeah. And this is stuff that has
7 been, I guess, provided to Mr. Gruber; is that
8 correct? Do you --

9 MS. RICHARDSON: Yeah. Mr. Gruber -- it was
10 handed from Mr. Gruber too.

11 THE COURT: Oh. Okay. Well you know what? More
12 than likely it's probably -- is everything, -- is that
13 all in here?

14 MR. GRUBER: Yes, sir. That's my APAs.

15 THE COURT: Okay. Because of the volume of the
16 paperwork what he did was he put it all on a CD for
17 me. That includes all of your medical records and
18 everything. You're welcome to hand it up to me, but
19 if it's the same thing that he's already provided to
20 you that part will be included on this. You see what
21 I'm saying?

22 MS. RICHARDSON: Okay.

23 THE COURT: But you're welcome to hand it up to
24 me, but if it's just a duplicate copy of something
25 that he's provided to you that would already be

1 included with what he's provided to me. Okay?

2 MS. RICHARDSON: Okay.

3 THE COURT: All right. And so what I was saying
4 when -- just to kind of to explain to you what I just
5 went through when I asked are there any objections to
6 APAs, jurisdiction, venue or any other items, what I'm
7 asking there is as far as APAs, that's the paperwork
8 that we just referred to. Jurisdiction, that means
9 that the Workers' Compensation Commission has
10 jurisdiction over this matter. And venue is where
11 we're holding this proceeding, and I just need to make
12 sure you don't have any objections to any of that.

13 MS. RICHARDSON: Okay. I -- the medication list
14 I don't think you had that on your -- the record where
15 I have to take Anastrozole for 10 years and after that
16 I get on another one. For the remainder of my life I
17 will be going to oncologist.

18 THE COURT: Okay.

19 MS. RICHARDSON: Every three or four months I
20 have to go back and see if I'm cancer free or not. I
21 don't think you have that document.

22 THE COURT: Is that a part of what you handed to
23 me or no?

24 MR. GRUBER: It's -- it's not, but there was a
25 stack of material that Ms. Richardson handed up this

1 past August.

2 THE COURT: Right.

3 MR. GRUBER: It's basically this. I've pulled a
4 couple of documents out, but the top page is that
5 handwritten agreement.

6 THE COURT: Okay.

7 MR. GRUBER: I was assuming that that was in the
8 Commission's files since she handed it up.

9 THE COURT: Okay. And that I would imagine is a
10 part of this which is what she handed up prior?

11 MR. GRUBER: Yes, sir.

12 THE COURT: Okay.

13 MR. GRUBER: And I -- the medication lists or
14 there is a medication list in that stack of documents.
15 That's -- that's the stuff that I copied.

16 THE COURT: Okay. That was attached to my file
17 that's (inaudible)?

18 MR. GRUBER: This is her stack. That's what I
19 filed after that and put in the record. Let me -- let
20 me just pull that.

21 THE COURT: Okay.

22 MR. GRUBER: I have my copy.

23 THE COURT: Okay. And while he's doing that
24 ma'am, just to go back, you don't have any objections
25 to where we're holding this proceeding or the fact

1 that the Workers' Compensation Commission is hearing
2 this proceeding? Do you have any objections to that?

3 MS. RICHARDSON: No.

4 THE COURT: Okay. All right. That's -- and
5 that's the main thing I needed to do. And without
6 objection the Commission file becomes a part of the
7 record with the exception of self-serving declarations
8 and unstipulated medical reports.

9 We are here today on a remand from the Full
10 Commission. And the issues to be decided today per
11 the Full Commission's Order was to -- determination of
12 mental competency and whether the Claimant received
13 adequate assistance from legal counsel in the -- with
14 the preceding Order -- preceding Agreement. And when
15 we -- when we convened for a hearing in August of this
16 year this hearing was postponed at that time pending
17 further discovery for Mr. Gruber. So Mr. Gruber I'm
18 going to let you, if you would, go ahead and put your
19 position on the record, sir and let us know what
20 you're seeking here today and what your findings were
21 as a part of your discovery.

22 MR. GRUBER: Thank you, Your Honor. You recited
23 the history of the case very well. This is a case
24 that was -- that was clinched back on December 10th,
25 2014 for \$20,000 and that was following a mediation

1 that took place on October the 31st, Halloween, 2014.
2 Mills Gullivan -- Gullivan was the mediator. I was
3 the lawyer representing the Employer and Charles
4 Brooks was representing Ms. Richardson. Following the
5 approval of the clincher, in the spring 2015 Ms.
6 Richardson filed a 50 requesting that the case be
7 reopened. She requested additional indemnity and
8 additional medical benefits. Employer/Carrier
9 responded with a Form 51 and we attended a hearing
10 before Your Honor I believe in August of 2015. Your
11 Honor's Order was that the -- the clincher could not
12 be reopened and repeated. Ms. Richardson filed an
13 appeal to the Full Commission and the Full Commission
14 remanded the case back to the Commissioner for a de
15 novo hearing specifically directing the Commission to
16 open the record and take testimony and make a decision
17 as to whether or not the clincher would be reviewed.
18 We appeared before Your Honor I believe it was August
19 27th, 2016 for a hearing at that time. It was
20 determined that we needed to do additional discovery
21 including -- I believe that was specifically ordered
22 to take the deposition of Charles Brooks, Ms.
23 Richardson's former attorney. We took his deposition
24 on October 3rd of 2016. Ms. Richardson was in
25 attendance. She participated in the deposition. My

1 position on this, I -- I feel certain that Ms.
2 Richardson will disagree with my position and that's
3 fine. My position based upon the deposition of -- of
4 Mr. Brooks is that there is a disagreement between Ms.
5 Richardson and Mr. Brooks as to exactly who said what
6 to whom. For example, Ms. Richardson alleges as she
7 alleged in the deposition that Mr. Brooks did not
8 explain the MSA process to her. Mr. Brooks says that
9 he did. I will note for the record that in this
10 particular case no MSA was -- was necessary because
11 the -- the settlement amount fell below the \$25,000
12 threshold limit so there was no MSA needed in the
13 case, even though she was a Medicare beneficiary at
14 the time. The other thing that came out of the
15 deposition, I believe, is that, you know, Ms.
16 Richardson did attend mediation. She provided all of
17 the information to Mr. Brooks for his representation
18 -- all the medical records she had and represented by
19 the Steinberg Law Firm prior to her hiring Mr. Brooks,
20 so she had a file. She had medical records. She had
21 whatever correspondence within her file -- that came
22 with her file from Steinberg, that sort of thing. I
23 think it was pretty clear from Mr. Brooks' deposition
24 that Ms. -- Ms. Richardson was very actively involved
25 in her case. She participated by providing all the

1 file materials. It didn't sound to me like Mr. Brooks
2 had to -- had to go out and get much of anything. He
3 didn't have to go run down, you know, rabbits or
4 whatever. And again, Ms. Richardson is -- is --
5 she'll get a chance to respond to this. That's just
6 my takeaway. I do believe that there was probably
7 maybe some miscommunication there, you know. I mean
8 obviously there was because we're here. So I think
9 that's clear. I think the upshot of the deposition
10 was you had a case, you had an offer that was made at
11 mediation that was accepted; the clincher was
12 approved. The other thing that was interesting -- I
13 didn't point this out earlier because I didn't really
14 think about it, is that the case was settled October
15 31st, 2014. There were some problems for whatever
16 reason -- I don't know what it was, but we didn't
17 actually end up sending the clincher out to Mr. Brooks
18 until December the 5th. I don't know why that
19 happened, I don't know what it was. It was kind of a
20 long time. Usually, you know, the next week you get
21 the clincher out, you order the check, that sort of
22 thing. So there was -- there was some time. The
23 check did not actually come in to my office until
24 December 16th of 2015, you know. And I had to -- I
25 had to overnight it to Charles' office so that it

1 could be processed quickly. So there was a lot of
2 time there and -- and -- and I think that when you --
3 when you read the deposition transcript, and I would
4 encourage Your Honor to do that, you'll see that Ms.
5 Richardson, at the very least, she had contact with
6 the office at the least. Mr. Brooks would say he
7 spoke with her a couple of times and she said he
8 didn't. But -- but clearly there was a period of time
9 there after the case was settled where they would --
10 they -- she was discussing some things with at least
11 the office, if not Mr. Brooks himself. Which brings
12 me to the first part of our position and it is we had
13 a settlement. Ms. -- Ms. Richardson had a lawyer,
14 She had a lawyer. She had a mediator. We had a
15 mediation. We stayed in Mills Gallivan's office for
16 the better part of a day hashing this out. There were
17 -- there were -- there were demands made, there were
18 offers made, I had to make a call up to New Jersey at
19 one point to get more money, I mean it was -- it was
20 the typical mediation process. We talked about this
21 last time we were here. Ms. Richardson signed a
22 document that was handwritten by me which I'm going to
23 hand up -- it's actually an exhibit to -- to Mr.
24 Brooks' deposition and I'll hand it up anyway. But,
25 you know, essentially saying that we reached the

1 settlement and we settled on a doubtful and disputed
2 basis fully and final. More formal settlement
3 agreements were coming. That was signed. The
4 clincher came out, it was signed the day of the
5 settlement and it was approved. And so we've got --
6 we've got this document full and final settlement. It
7 was done. The parties got the money. Ms.
8 Richardson's attorney at least received the check, a
9 Form 61 was processed, he took a fee and he may have
10 taken some costs as well, and Ms. Richardson received
11 the balance which is totally typical. We cannot find
12 any -- and this is our position, this is -- this is --
13 this is the advocacy part of what I'm saying. I was
14 trying -- trying to give you the facts and now I'm --
15 now I'm giving you my interpretation of what those
16 facts mean. We can't find any reason to go back into
17 this clincher. We just -- it -- I -- I can't do it.
18 Ms. Richardson has said at one point that she didn't
19 know in October of 2014 that she had breast cancer,
20 that she was diagnosed with breast cancer in January
21 2015 which I believe is correct; that had she known
22 she had breast cancer she wouldn't have signed it and
23 she testified to this in her deposition which we took
24 July the 29th of 2015 before that first hearing. But
25 that was -- you know, she was concerned about and had

1 she known where she was headed diagnosis-wise she
2 would not have -- have signed it, which is really sort
3 of a merits issue. That's not so much of a procedure
4 issue. That is a -- what could be related to this
5 lead I -- I still have not seen any evidence that
6 links lead exposure to breast cancer. And Ms.
7 Richardson has included in her -- her stack of
8 documents some pamphlets and documents which purport
9 to link lead exposure to other types of cancer. I
10 haven't seen breast. And moreover and most
11 importantly I haven't seen a doctor say this caused
12 the breast cancer. I just -- I haven't seen that.
13 Even if there were I think you would still have a huge
14 procedural problem. The Commission with going back
15 and reopen that question. Okay? Because that
16 evidence certainly was not in existence October 31st
17 of 2014 because she hadn't even been diagnosed yet.
18 So I think that's a big -- that's just a big problem.
19 The other issue that's come up is this issue of
20 whether or not she needed a guardian and whether or
21 not she had the mental capacity to participate in her
22 own case. I would just point out -- I think you've
23 had an opportunity to -- to observe Ms. Richardson and
24 observe her handling of her own case. She's doing a
25 pretty good job. Okay? She's testified that she is

1 the one who provided all the information to Charles
2 Brooks. She had the information because she had a
3 lawyer prior to that. She provided it to him and he
4 got her \$20,000 on a case that has always been denied.
5 We -- we didn't think it was worth anything. He got
6 pretty good results. Some would say it was a very
7 good result. So -- and there are other things that
8 have come out -- that came out of Mr. Brooks'
9 testimony. He helped her out on a case, a slip and
10 fall case, involving Lowe's. Same sort of deal; she
11 provided the name of the adjuster. She basically did
12 the work of an assistant documenting the information
13 that he needed to do his lawyer stuff.

14 MS. RICHARDSON: May I -- may I say something?

15 THE COURT: Yeah, you're going to. I'm going to
16 give you an opportunity in just a minute, ma'am. And
17 I'm going to let you put your position on the record
18 just like Mr. Gruber. Okay?

19 MS. RICHARDSON: Okay.

20 MR. GRUBER: And this is not a putdown to Ms.
21 Richardson at all. I think that she's -- I mean it's
22 -- contrary to her position that she -- she doesn't
23 have the ability to understand the proceedings we
24 believe that the evidence indicates she understands
25 them very, very well. She does -- she does a very

1 good job. Moreover, there is no evidence that she's
2 ever had to have a guardian for anything. She was
3 placed on Social Security Disability in 1998. I've
4 got her file. She did not have a guardian for that.
5 There have been several slip and fall injuries and
6 I've included the records of those in the APAs in
7 which she didn't have any -- she didn't have a lawyer.
8 She -- she basically handled her own claims. And
9 again, that's not a putdown to her at all. So we
10 believe with regard to the evidence of a guardian and
11 whether or not there needs to be a guardian, the proof
12 is in the pudding. I mean if you look at her
13 demeanor, if you look at how she handles herself it
14 just doesn't -- that just doesn't suggest that she
15 needs a guardian. But again, and this sort of goes
16 back to the argument I made about whether or not there
17 actually could be evidence that lead exposure causes
18 breast cancer, we don't think it really matters in the
19 end. Even if she did need a guardian, okay, the
20 Commission would have to go back and then it would
21 have to find out that because she didn't have a
22 guardian somehow she was cheated out of benefits that
23 she would otherwise have gotten. And we think that's
24 a bridge too far. Again, we're going -- you know,
25 this is a case that was never admitted. Okay? It was

1 a relatively short period of employment. The
2 conditions that she had are not generally ones that
3 you relate to lead exposure. Okay? There -- there
4 are a few of them. She didn't have any of them. This
5 is evidence that would come in if we were to conduct a
6 hearing. So even if a guardian -- I mean a guardian
7 we believe would step into this case and say, you know
8 what, you got a good deal. You got -- you got -- you
9 got money that you probably would not get if you went
10 to a hearing. So even if one could go back and say,
11 yeah maybe she still had a guardian, which we don't
12 believe anybody logically could, we don't believe it
13 would make any difference. And that sort of -- I
14 guess it sort of brings me to my -- to my wrap-up, is
15 you have a Claimant who she has -- she has terrible
16 medical problems. She does. And that is a fact. But
17 this was done the right way. Okay? This was done the
18 right way. She had an attorney. She does not get
19 along with that attorney. There is no dispute there.
20 That comes through in the transcript. You can hear
21 the voices. They don't get along. He got her money
22 that she may very well would have not gotten had the
23 case been decided by the Commission for reasons of
24 evidence and whatnot. So our request, based upon
25 those points, is that the Commission enforce the

1 clincher and dismiss this case. If the Commission is
2 inclined to reopen the case to appoint a guardian or
3 those things, we request that we get a credit for the
4 \$20,000 that we've paid and that we be entitled to a
5 full merits hearing on the -- on the medical evidence,
6 because that's not really -- I don't really feel like
7 we're doing that here today. We are --

8 THE COURT: That's not what is before us today.

9 MR. GRUBER: Okay.

10 THE COURT: What is before us today is whether
11 there are grounds enough to reopen the claim and to
12 whether or not Ms. Richardson is competent enough to
13 represent herself in this matter.

14 MR. GRUBER: So that would be my request -- to
15 enforce the Cincher. If not, that we would request a
16 credit for the \$20,000 paid and a full merits hearing.
17 Thank you, Commissioner.

18 THE COURT: Thank you. Ms. Richardson?

19 MS. RICHARDSON: Okay. When I went to
20 Commissioner -- with the first hearing with
21 Commissioner T. Beck --

22 THE COURT: Uh-huh.

23 MS. RICHARDSON: -- he told me that -- that I
24 would have need to find some attorney to represent me.
25 So I went out and I searched and I searched and I

1 searched.

2 THE COURT: Well, he would have given you the
3 option.

4 MS. RICHARDSON: Yeah, he gave me the option.

5 THE COURT: Yeah. We -- we can't -- we can't --
6 we can't --

7 MS. RICHARDSON: He didn't tell me -- you right.
8 He gave it to me.

9 THE COURT: He was giving you the option.

10 MS. RICHARDSON: Yeah. He gave me the option.

11 THE COURT: Yes, ma'am.

12 MS. RICHARDSON: And then I understand when he
13 said something about -- now I'm not -- I won't
14 consider myself as being a person of -- I'm not a
15 person of -- I need somebody guide my hand and show me
16 how to buy something or pay for something, but when it
17 comes to comprehending like from here to here, because
18 I can speak, but when it comes from my brain to the
19 paper it gets confusing. And then reading it gets
20 real confusing and if I hear too many talking and if I
21 stay in a conversation too long I don't comprehend
22 well. I don't understand what you saying at all,
23 really. And I'm not standing here before the court
24 for the court to feel sorry for me pitiful, because
25 I'll tell you, I hate this ever happened to me,

1 because I was as far gone to where I am right now to
2 cause a hindrance to me and my children. And I
3 wouldn't be sitting here to try to get money from
4 nobody, but I think I deserve the money and for the
5 clinchier to get reversed because of the fact that
6 during the deposition, Attorney Charles Brooks --
7 before all this happened we got along just fine. But
8 when I went back to him and asked me to bring me back
9 to court it was a problem. Then they threatened me as
10 calling the cops on me if I didn't leave the property.
11 They never give me any information on the file. I
12 never seen no Order, never seen no Order before I got
13 the check. Never. And I'm telling the truth. Never.
14 And I got so many doctors like the oncologist here.
15 When Dr. Williams send me to -- I got a -- a letter
16 from the plant nurse when I called in -- the very
17 first day I got sick I called in and this the letter
18 right here.

19 THE COURT: Okay.

20 MS. RICHARDSON: I feel that the clincher should
21 be reversed because of the fact that I was -- I was
22 poorly represented, very poorly represented by Mr.
23 Brooks. And his -- his company and they stated on the
24 deposition they did did things out of Order. Now I
25 don't know what out of order means, but they didn't

1 did it properly. He didn't did it properly and Mr.
2 Charles Brooks, he don't know the procedure of a
3 workman comp procedure. He don't know what forms go
4 first. He don't know what forms last. I don't know
5 either. But I got plenty of evidence where studies
6 shown where I got white substance on the MRI around my
7 brain, a mass removed from out of my right breast
8 before I came down with breast cancer. I got
9 documents from the plant nurse. I got documents from
10 the plant doctor. I got documents from everybody. I
11 got it all. Dr. Healy, I got medical history saying
12 it's something that what lead causes. I got the IASOS
13 claim -- replacement claim details -- detailing,
14 explaining (inaudible), this guy here saying that --
15 that the loss description was -- was chemical
16 exposure. And that from his company. And they got my
17 claim of status is open. They got the adjuster
18 company name Mitsui Insurance Company of America. The
19 adjuster is Robin Cathay. I didn't even know I had a
20 adjuster. And they got the policy of workman comp.
21 Everything is still open. Then they got here that --
22 that there are -- there are ongoing responsibility for
23 my medical -- ongoing for workman comp and open status
24 for medical. That tell it all. They tell it. That
25 -- that tell it all.

1 THE COURT: Okay. Well and -- and I want to be
2 clear. What -- what I need to -- what I'm here to do
3 today or -- or what I'm going to go away from here and
4 do is make a determination obviously as to whether I
5 can reopen your claim; whether grounds exist enough to
6 reopen the claim. So what I need to do is focus on
7 what evidence that there is. Do you have anything --
8 I know that when we had previously met and I -- I do
9 want to make sure that you're -- you're waiving your
10 right in this issue to sit here and talk to me today,
11 to provide testimony to me and that you're
12 representing yourself in this matter today is
13 basically, and waiving your right to that.

14 MS. RICHARDSON: I -- I -- I understand --

15 THE COURT: Yeah.

16 MS. RICHARDSON: -- because -- yeah, it's word
17 from me.

18 THE COURT: We had explained that. I just want
19 to make sure because we went through that last time at
20 the last hearing. I just want to make sure that that
21 was still your -- your same --

22 MS. RICHARDSON: Yeah. Yes. It very --

23 THE COURT: -- position and you're waiving your
24 right to --

25 MS. RICHARDSON: -- very difficult finding a

1 lawyer in this -- in this far gone in a case. And
2 with the set-aside Medicare it never was discussed
3 with me. I promise you. I never -- I talked with
4 Charles. Charles promised me he would give it to me.
5 But only Charles and Attorney Gruber discussed it. I
6 didn't know nothing what they was talking about.
7 Nobody never came to me. He never said anything.
8 Charles never said anything.

9 THE COURT: And I believe that if I remember
10 correctly when we convened -- originally convened this
11 hearing in August I believe that at that time you were
12 saying that the Clincher Agreement -- and correct me
13 if I'm stating this wrong -- that the Clincher
14 Agreement that was provided was not your signature on
15 that; is that correct?

16 MS. RICHARDSON: That Form 19 -- the Form 19?

17 THE COURT: Well, the Form 19 --

18 MS. RICHARDSON: The first -- the first --

19 THE COURT: -- but also the actual Agreement.

20 MS. RICHARDSON: The actual clincher -- the
21 actual clincher at the -- at the -- the hearing I
22 signed that. But I don't remember signing no other
23 forms.

24 THE COURT: Okay.

25 MS. RICHARDSON: And I don't remember -- and I

1 know I didn't see no Orders because it upsetted me
2 after I saw the Order -- after the Order -- I saw the
3 Order. I would never sign nothing like that. Never.

4 THE COURT: But was that -- so was that not your
5 -- that wasn't your signature on that form?

6 MS. RICHARDSON: It don't look like my signature.

7 THE COURT: Okay. Now was -- I think -- was
8 there a -- if I remember correctly there was some --
9 there was an issue about and -- and as I say if I'm
10 incorrect about this please correct me on this, but I
11 think there was an issue that you had -- you had made
12 a statement last time about that Mr. Brooks had
13 advised you that you had to get this done quickly and
14 it needed to be signed; is that -- am I incorrect in
15 saying that?

16 MS. RICHARDSON: Yeah. You're right. You're
17 right. You're right. He said at the clincher.

18 THE COURT: Okay.

19 MS. RICHARDSON: Yeah, the clincher he said.

20 THE COURT: Well, tell me a little bit about that
21 just to refresh my memory and for the record again.
22 Okay?

23 MS. RICHARDSON: Well, we was at -- we was at the
24 clincher -- Mr. Gallivan, what was his name and
25 Charles Brooks and, you know, Gruber -- Attorney

1 Gruber coming back and forth. And so he brought the
2 document in and Charles signed it, I signed it. But
3 Charles Brooks didn't read in detail saying what I
4 could have did afterward I signed the form. I had
5 rights to not go no further. Nobody didn't explain it
6 to me. He didn't explain it, Gallivan didn't explain
7 it, Charles Brooks didn't explain it, but him and
8 Charles Brooks had a lot of communication going on;
9 plenty of it. And then the way this man talked, I
10 know I'm not the best talker in the world, but this
11 man went to law school. And some things he sat down
12 and explain to me, you can't understand that man. And
13 like I said, you know, comprehending things, I'm not
14 saying I'm retarded, but I can't comprehend as well.
15 I'm doing the best I can to stay on top of everything.
16 It's hard. This living this life, it's hard. It's a
17 struggle. Not only struggle financially, physically,
18 mentally, health-wise. You know, sometimes I hope I
19 didn't have to go through this. When I went through
20 breast cancer I didn't care if I live or die. That
21 the way I feel, I did because I didn't have to go
22 through anymore. I didn't care no more.

23 THE COURT: Yes, ma'am.

24 MS. RICHARDSON: I didn't care no more, because
25 you know what, I'm tired struggling. I'm tired of

1 people picking at me, to be honest. On this right
2 here, he say he didn't -- the sign -- the Form 19 was
3 signed on the 24th. Charles Brooks deposited the
4 check on the 23rd. So I asked him did the 19 came
5 with the settlement? He said yeah. Charles say no,
6 Charles said he signed all the documents because he
7 had authority to sign all my documents. So he signed
8 all the documents. He did it. He had the right to do
9 it so he did it. He lied and said I couldn't come by
10 the office and sign documents. He lied. I was able
11 to go by and sign my documents. He said on the
12 deposition he signed all the documents. And I asked
13 him about that 19 because I was confused. I said what
14 come first, the 19 or the check because I don't know?

15 THE COURT: Okay. And --

16 MS. RICHARDSON: And the Order I never seen -- if
17 I had saw the Order with -- with just -- his insurance
18 had -- had wrote, huh-uh, I wouldn't have signed that
19 thing. I never got that Order.

20 THE COURT: Now let me ask you this, do you have
21 any -- as I say one of the determinations I have to
22 also make is as it pertains to the competency issue.
23 Do you have anything that you want to present to me,
24 hand up to me, any kind of evidence that -- from a

1 doctor saying that you're incompetent to represent
2 yourself in this matter or to comprehend this matter?

3 MS. RICHARDSON: Well, I think I did send
4 something -- gave y'all something earlier. I gave you
5 something earlier.

6 MR. GUBER: Yeah. That's in that stack of
7 documents, Your Honor.

8 THE COURT: That is? Okay sir. So that's
9 already a part of the record from you?

10 MS. RICHARDSON: Yeah, because -- because
11 Attorney Dunbar represented me also to have somebody
12 and then -- and then Ridgeland Spring commented and
13 Dr. Williams commented.

14 MR. GRUBER: Those documents are in there.

15 THE COURT: Okay. Okay. And that's all I need
16 to make sure, but I want to make sure --

17 MS. RICHARDSON: Yes. They got it in there.

18 THE COURT: Okay. I wanted to make sure that I
19 had that to review --

20 MS. RICHARDSON: Yes.

21 THE COURT: -- so that I can make a full
22 determination of everything.

23 MS. RICHARDSON: At one point I was retarded --
24 they could have called me retarded, because I couldn't
25 -- I couldn't talk, I couldn't walk, I couldn't think,

1 I forget I had children. And what the problem was
2 they put me in a mental institution and they knew that
3 I know that I need to been hospitalized. Because
4 right here when they see the MRI, when they see the
5 smoke around my brain and I already said they got the
6 lung -- the smoke in my lungs -- you can -- you can
7 get these right here where --

8 THE COURT: Are those part of what you handed up
9 to me? Part of the -- part of what you handed up last
10 time?

11 MS. RICHARDSON: No. Huh-uh. No. Huh-uh. The
12 smoke around my lungs and then this where the breast
13 cancer was in my right breast. And this right here
14 where -- where it stated -- where the similar --
15 company stating that -- that they are the cause of my
16 chemical exposure.

17 MR. GRUBER: The last one? Yeah.

18 MS. RICHARDSON: Uh-huh. And then I got some --
19 I think I already give you that medical evidence right
20 there.

21 THE COURT: Okay.

22 MS. RICHARDSON: About lead poisoning.

23 THE COURT: And here again, I'm not here to make
24 a determination on any of those issues right now. I'm
25 here obviously here just strictly on whether the claim

1 could be reopened and whether there was -- per the
2 Full Commission's Order and the determination of
3 competency. Those are the things before me today.

4 MR. GRUBER: I just want to clarify a couple of
5 things. The ISO claim search that she's referring to
6 is the ISO claim search is a lists of all the claims
7 that she's filed going back to 2001. Apparently there
8 is an open claim.

9 MS. RICHARDSON: Yes, it's open.

10 MR. GRUBER: With Mitsui right now. There is an
11 adjuster. The alleged injury was and it says was
12 exposed to lead and other toxic chemicals. And the
13 reason there's an open claim is because -- this claim
14 is open is because we're here and we're having
15 hearings and the insurance company has to have an open
16 file to -- frankly. And the other thing again, with
17 the issue of competency Ms. Richardson --

18 MS. RICHARDSON: May I have those back, please?

19 MR. GRUBER: Oh sure. I'm sorry. This is
20 included in the APAs, --

21 THE COURT: Okay.

22 MR. GRUBER: -- Your Honor.

23 THE COURT: Okay.

24 MR. GRUBER: She was an in-patient at Richland
25 Springs in 1998 for schizophrenia. That is true.

1 She's on Social Security Disability for schizophrenia,
2 and I believe that's primary. There may be another --

3 MS. RICHARDSON: I was lead poisoned -- I was lead
4 poisoned.

5 THE COURT: Okay. Well, let me let him finish
6 and then, of course, I'm going to let you keep adding
7 what you need to, ma'am.

8 MR. GRUBER: But again, there's -- she's never
9 had a guardian appointed by a Probate Court, a Family
10 Court, or any -- any authority, Commission or
11 otherwise. And -- and she -- she has managed her own
12 affairs effectively, as I pointed out earlier. Now
13 the letter she's referring to from Vernon Dunbar, he
14 sent that letter to everybody apparently. And I -- I
15 can't comment on that. I guess one lawyer thought,
16 maybe she should have a guardian, but you know, that
17 went to her two lawyers that she had at the time. It
18 went to the Commission. It went to -- to the
19 successor company at Exide. She hired a lawyer in
20 2014 in Charles Brooks and went to mediation and --
21 and clinchered the case for -- for \$20,000. She
22 clinchered -- she got \$20,000 with Charles Brooks and
23 she got zero with Steinberg. So --

24 MS. RICHARDSON: No, I fired Steinberg.

1 MR. GRUBER: So -- some might say that Charles
2 did an outstanding job. Okay? I'm just saying. So
3 Commissioner, I believe our position is -- is clear.

4 THE COURT: Okay

5 MS. RICHARDSON: Charles Brooks did not do no
6 outstanding job. You can ask him what the procedure
7 of a workman comp case. He couldn't tell you how to
8 do a procedure of a workman comp case. He didn't --
9 he don't know my doctors. He don't know what my
10 medical history. He don't know nothing. He don't
11 know nothing about me.

12 THE COURT: And you don't think he filed the
13 proper forms; is that what you're saying?

14 MS. RICHARDSON: He didn't -- he didn't did the
15 proper procedure the way he supposed to have done it.
16 He -- what he did, he directed Charles through the
17 whole workman compensation. He directed him. He
18 directed him. Plus they wanted me to go in a
19 mediation with attorney that I fired. That let me
20 know that Charles Brooks didn't know what he was
21 doing. He was guide Charles Brooks -- Attorney Brooks
22 -- Attorney Gruber was guide Charles Brooks the whole
23 entire time.

24 THE COURT: And how -- how are you aware of that,
25 ma'am?

1 MS. RICHARDSON: On the deposition.

2 THE COURT: Okay.

3 MS. RICHARDSON: Because he said, you know -- you
4 know --

5 THE COURT: I'll read the -- I'll read the
6 deposition in its entirety.

7 MS. RICHARDSON: Yeah. It on there. Uh-huh.
8 It'll tell you. He -- he said, you know, because he
9 wanted to get off the record because Charles was
10 really about to tell on him. Charles was telling on
11 him. You -- you -- you can see. Him and Charles got
12 into an argument.

13 THE COURT: Okay. And as I say I'll certainly
14 read the deposition in its entirety.

15 MS. RICHARDSON: Okay. On -- on page 38 he said
16 a check -- and I sent express check and document was
17 sent later to sign. He -- he said he didn't know he
18 sent the -- the check -- overnight check. Charles
19 said, yes, you did. He said man, I can't remember I
20 sent that check. And Gruber was trying to decide --
21 those two proceeding was trying to decide what was
22 best for me, but nobody was talking to me asking me
23 what was best for me, what was best for Stella. So I
24 -- he didn't even know the date that I hire him. I
25 hire him April 1st, 2014. He didn't know what date I

1 hire him. They asked him did he know what date I hire
2 him. He didn't know that. He said I was in the
3 office when he called Malcolm Crosland and asked
4 Malcolm Crosland did he have a lien on my case. And
5 so he had to wait a couple of days -- I was in the
6 office and he had to wait a couple of days. Now if he
7 had to wait a couple of days why did I sign the
8 agreement of hiring an attorney on April 1st if he had
9 to wait a couple of days? He ain't had to wait no
10 couple of days. I hired him on April 1st. So how you
11 going to wait a couple of days to ask Malcolm Crosland
12 do you have a lien on my case? Why would you hire --
13 why would you let me hire you if you thinking that I
14 had a lien on my case?

15 THE COURT: Okay. And is that what you were just
16 referring to? What were you just referring to that
17 you recall about that?

18 MS. RICHARDSON: That it -- this April 1st when
19 I hire him.

20 THE COURT: Oh. Okay. I see.

21 MS. RICHARDSON: And he was saying that on the
22 deposition that on page ten -- on page ten he said --
23 he said I was in the office. And -- and then that --
24 and then he had to wait a couple of days before he --
25 before he accept my case. But he accept my case the

1 very first day. So he didn't wait on my -- Malcolm --
2 first of all, Malcolm Crosland, you not going to get
3 him on no one -- first -- first call, nobody. I don't
4 care who you are. That's out of the question. So I
5 wasn't in no office when he called Malcolm Crosland,
6 that -- you ain't going to get Malcolm Crosland.
7 Malcolm Crosland might call you, but you ain't going
8 to get him. Now, I'm not saying that I -- I -- I'm
9 not saying that I can't handle my -- I raised my --
10 helped my -- daughter, I raised my kids. I'm not
11 saying that I'm retarded, but I'm not -- I'm not the
12 average person can be handling -- I'm doing the best I
13 can. I'm struggling. I'm telling you I'm struggling.

14 THE COURT: Okay. All right. And I -- and I
15 understand honestly your position on that and I have
16 -- I'm glad that I have the notes that I have in the
17 records the -- the doctor's notes addressing
18 competency and that sort of thing. I understand that
19 that's in there, so I'll certainly review that as
20 well.

21 MS. RICHARDSON: Uh-huh.

22 THE COURT: And I -- I certainly understand your
23 position and it sounds to me a lot of this will hinge
24 on me having to review the deposition that was taken
25 and comparing that to what you're telling me here

1 today and the information you've already provided to
2 me.

3 MS. RICHARDSON: Uh-huh.

4 THE COURT: And so I think I have all of what I
5 need as far as making a decision on that. I do need
6 to see -- Mr. Gruber, do you need to take any
7 testimony while we're here with Ms. Robinson on the
8 record?

9 MS. RICHARDSON: Ms. Richardson -- Ms.
10 Richardson.

11 THE COURT: Richardson. I'm sorry. I've done
12 that to you three times. I apologize about that.

13 MR. GRUBER: Judge, I was really just going to
14 ask her, if you needed testimony, to confirm that we
15 attended mediation and I was going to ask her to
16 confirm that she actually signed the -- the clincher.

17 MS. RICHARDSON: I signed the clincher at the
18 mediation.

19 MR. GRUBER: Well you -- you did -- well you
20 signed this piece of paper. What I'm going to ask --

21 THE COURT: All right. Before we get into that
22 let's do this, just so we can put that on the record
23 let's do that as formal testimony. Ms. Richardson, if
24 you would please raise your right hand for me, ma'am.
25 Do you swear or affirm that the testimony you are

1 about to give is the truth, the whole truth and
2 nothing but the truth?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. You can put your hand down and
5 -- okay and -- and Mr. Gruber, your witness.

6 MR. GRUBER: Thank you, Commissioner.

7 Stella Mae Richardson,
8 Having first been duly sworn, testified as follows:

9 DIRECT TESTIMONY

10 BY MR. GRUBER:

11 Q Ms. Richardson, you remember that we
12 attended mediation in your case back on October the
13 31st, 2014?

14 A Yes, sir.

15 Q Okay. And you had your attorney Charles
16 Brooks there with you; is that right?

17 A Yes, sir.

18 Q Okay. And I'm trying to find this piece of
19 paper. And following mediation do you -- do you
20 recognize that document?

21 A Yes, sir, I signed it.

22 Q Okay. What is this document?

23 A That was a temporary Clincher Agreement
24 until we get the Order. I never seen a Order.

25 Q Okay.

1 A So that -- that clincher is voided because I
2 never seen a -- I never seen a Order.

3 Q This is your --

4 A That's my signature, but I never seen the
5 Order.

6 Q Okay.

7 MR. GRUBER: Commissioner, this is attached to --
8 I can attach it as an -- just as exhibit.

9 THE COURT: Okay.

10 MR. GRUBER: Defendants' Exhibit 1.

11 (Defendants' Exhibit 1, Clincher Agreement,
12 marked for identification and entered into the
13 record.)

14 Q Ms. Richardson, I'm going to show you
15 another document. Do you recognize this document?
16 This is consisting of probably nine pages.

17 A Those were the pages was given to me
18 far after I got that \$12,000. I never seen that until
19 after I got that \$12,000. If I had saw that paper
20 right there I would throw that paper away.

21 Q Is this your signature on page (inaudible)?

22 A It don't look like my signature, because
23 Charles Brooks said he -- he said on the deposition he
24 signed all my -- he executed all the documents,
25 because he said I wasn't able to come in his office.

1 Q Okay. Is -- is -- did you sign this
2 document?

3 A It don't look like my -- it don't look like
4 my signature.

5 Q Let me ask you a couple of other questions.
6 Do you remember when I took your deposition in July of
7 2015; do you recall that?

8 A I'm trying to think.

9 Q I drove to Sumter and I think we were in --

10 A July 20 -- that -- that would be process of
11 going through chemo I think.

12 MR. GRUBER: Okay. If you'll bear with me just a
13 second, Your Honor.

14 THE COURT: Yeah. Take your time. And just for
15 clarification, Mr. Gruber, the document that you were
16 just asking about with her signature is not this
17 document that you handed up?

18 MR. GRUBER: No. This -- I'll go ahead and hand
19 these up. This is the Petition for Approval.

20 THE COURT: Okay. And I didn't mean to -- I just
21 wanted to make sure I had what you were referring to.

22 MR. GRUBER: That's in the copies.

23 Q Ms. Richardson, do you recall in your
24 deposition -- you may not, because it's been a while
25 ago, in which you said that you did sign the papers

1 regarding your settlement. Do you remember telling me
2 that?

3 A The clincher at the October 31st, I signed
4 it.

5 Q Okay. So you deny ever going to Mr. Brooks'
6 office to sign any documents?

7 A Well, Mr. Brooks never was in his office.
8 Every time I go down there he never was in there.

9 Q That's not really my question. Did you ever
10 go by his office to sign documents?

11 A Have I went by -- to pick up the check.

12 Q Well, we talked about this in the
13 deposition. We talked about this Power of Attorney.
14 Do you recall what this document is? Do you recognize
15 this?

16 A I never seen that Order.

17 Q You -- this is not your signature?

18 A It don't look like it.

19 Q Okay.

20 A And I never seen the Order.

21 Q Because I believe you testified in Charles'
22 deposition -- or actually didn't testify because you
23 weren't under oath, but you said you did sign a Power
24 of Attorney.

25 A Well, I didn't see no Order.

1 Q Okay. Let me ask you this, what -- what
2 Order --

3 A I never seen no Order. All that stuff right
4 there y'all throwing at me, sir, I won't lie to you.
5 I haven't seen nothing. I been going through chemo
6 and everything. Later on those -- that I had -- those
7 -- that stuff was mailed from him. He mailed it to
8 me. Charles Brooks ain't mailed me anything. Charles
9 Brooks never gave me a file on nothing.

10 MR. GRUBER: Judge, if she's going to deny
11 signing anything then I would ask we get a handwriting
12 expert because this is not the testimony that we
13 received in her deposition. It's not the testimony or
14 the comments that came forth at Charles Brooks'
15 deposition. This is kind of -- you know, and frankly,
16 this really isn't an issue for the Commission at all.
17 If she is going to allege that Charles Brooks forged
18 her name she needs to sue Charles Brooks. The
19 Commission has no jurisdiction to deal with that.
20 That's our position. But I would just put that out
21 for the Commission. If she's going to deny that she
22 even signed the documents that she previously said she
23 signed then we need to get an expert to look at her
24 signature.

25 A How about the Form 19 -- the Form 19 where

1 you signed and send to him? Who signed that document
2 for -- for Charles?

3 Q This is the Form 19.

4 A So who signed that?

5 Q Well, Ms. Richardson, it was -- it was
6 testified to and made clear in the deposition of
7 Charles Brooks that you signed a Power of Attorney and
8 that based upon that he endorsed your check and he
9 signed the 19.

10 A Well, he said he execute all the document.

11 Q Okay.

12 MR. GRUBER: Judge, I would just -- I would just
13 ask that you please read Charles Brooks' deposition
14 and I've made my request.

15 A Well, he said he execute all of them.

16 THE COURT: And do I also have Ms. Richardson's
17 deposition? Has that been submitted?

18 MR. GRUBER: I think I submitted it.

19 MS. RICHARDSON: See what -- see what him and
20 Charles Brooks did they hid all the Orders and I ain't
21 never seen not one Order. I ain't never seen not one
22 Order. And I think -- and I -- is it right for my
23 attorney to get direction from Yuasa' attorney for him
24 to direct him how to do my case? Is that right? I
25 don't think that's right. They -- they discussing my

1 case? I don't know nothing about it.

2 THE COURT: Yes, ma'am. And I -- and as I say
3 I'll -- I certainly will go back and review everything
4 that is before me. Mr. Gruber is correct in stating
5 that if you felt that there were -- if you do feel
6 that you were misrepresented by Mr. Brooks in some way
7 and want some action taken against him that's -- this
8 is not the forum to do that. You would have to take
9 it up --

10 A No, we here to reverse the clincher.

11 THE COURT: Right. That's -- yeah exactly. I
12 just want to make sure that I put that --

13 A Right.

14 THE COURT: -- out on the record for you.

15 A Right.

16 THE COURT: That's not --

17 A Right.

18 THE COURT: I don't have -- I don't have the
19 authority to --

20 A I got that. We're here to reverse the
21 clincher.

22 THE COURT: Yes, ma'am. And -- and Mr. Gruber,
23 to your point regarding a handwriting expert, as I
24 say, let me review everything first. If I feel like
25 that was needed then I will certainly address that in

1 my Order, but I need to kind of digest everything
2 first. Do you have any further questions?

3 MR. GRUBER: I don't have anything further.

4 THE COURT: Okay. And was there anything more of
5 the documentation you were just referring to that
6 needs to be handed up to me pertaining to this subject
7 matter?

8 MR. GRUBER: Between the APAs that I submitted
9 and between the documents that Ms. Richardson
10 submitted back in August, I think you've got
11 everything.

12 THE COURT: Okay.

13 MS. RICHARDSON: Okay. Do you need any of this
14 additional information that I have where the company
15 admitting that their -- the lead exposure and this
16 oncology doctor about the brain?

17 THE COURT: No. No, ma'am. And the reason I
18 want you to hang onto that, because as I say that's
19 not a matter that's before me today as far as relates
20 to those issues, because if I were to rule that we
21 reversed the clincher and I were to rule that, you
22 know, it all depends on whether I find that you're
23 competent to be able to represent --

24 MS. RICHARDSON: But the --

25 THE COURT: -- yourself in that matter --

1 MS. RICHARDSON: -- yeah.

2 THE COURT: -- all that would be a matter for
3 another day.

4 MS. RICHARDSON: Yeah, but -- yeah.

5 THE COURT: So right now I think, unless you have
6 anything that directly pertains to the --

7 MS. RICHARDSON: The Order.

8 THE COURT: -- to -- to the Order and the issue
9 with Mr. Brooks --

10 MS. RICHARDSON: Yeah.

11 THE COURT: -- and your competency I think I have
12 everything else --

13 MS. RICHARDSON: Yeah.

14 THE COURT: -- that I need.

15 MS. RICHARDSON: Yeah, because I never seen the
16 Order, sir. I won't lie to you. I never seen a
17 Order.

18 THE COURT: Okay.

19 MS. RICHARDSON: I never seen a Order.

20 THE COURT: And is there anything that you have
21 to hand up to me with that regard? I mean as far as
22 the competency issue or anything, or do I have
23 everything that I need?

24 MS. RICHARDSON: (Inaudible), anything over there
25 from Dr. Brenda Williams? I think you got everything

1 from Dr. Brenda Williams. I think we gave it to you
2 the last time from Dr. Brenda Williams, her comment.

3 THE COURT: Okay.

4 MS. RICHARDSON: And Dr. Gray. Uh-huh.

5 THE COURT: Okay. All right. That's fine as
6 long as I have -- like I say, I have a whole stack
7 here so. Yes I do. I have from Dr. Gray. I did -- I
8 have -- I see that right here.

9 MS. RICHARDSON: At Richland Springs and the
10 comment made by Dr. Byrd and Dr. Brenda Williams?

11 THE COURT: Okay.

12 MS. RICHARDSON: Where he was talking about I
13 walking around the plant like a zombie?

14 THE COURT: And that was handed to me previously?

15 MR. GRUBER: That was -- I believe that was in
16 that stack of documents Ms. Richardson handed up in
17 August.

18 THE COURT: Okay. Okay.

19 MS. RICHARDSON: Okay. Here the thing right here
20 from Mr. Dunbar allegedly --

21 THE COURT: And I know I have that.

22 MS. RICHARDSON: Okay.

23 THE COURT: I know I have that from Mr. Dunbar.
24 Is that all that y'all have to hand to me?

25 MS. RICHARDSON: And then that -- that Lowe's

1 case where he keep bringing up they -- the -- when I
2 fell, the lady -- the young lady came to me -- the
3 store manager that night. She said, ma'am just call
4 back up to the store and we'll give you the adjuster
5 name. That how I got the adjuster name. That is so
6 easy. That's all been to that.

7 THE COURT: Okay.

8 MS. RICHARDSON: Uh-huh.

9 THE COURT: All right.

10 MS. RICHARDSON: And then I got that Lowe's case
11 where -- where Charles. Do you want that?

12 THE COURT: I -- no. The Lowe's case that was
13 referred to?

14 MS. RICHARDSON: Yeah. Uh-huh.

15 THE COURT: I have -- I have that.

16 MS. RICHARDSON: You got the Lowe's case?

17 THE COURT: I'm familiar with that. Yes.

18 MS. RICHARDSON: Okay. All right then.

19 THE COURT: All right. Well, there being nothing
20 further if y'all don't have any more for me then that
21 concludes this proceeding.

22 (The hearing concluded at 1:05 p.m.)

'BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 9832206

Stella Mae Richardson,	)	
Claimant,	)	
vs.	)	DEPOSITION OF
	)	CHARLES T. BROOKS, III
Yuasa Exide, Inc.,	)	
Employer,	)	
and	)	
Great American Insurance Company of	)	
NY,	)	
Carrier,	)	
Defendants.	)	

Deposition of CHARLES T. BROOKS, III, taken by
Doris Tompkins Brown, Certified Verbatim Reporter and
Notary Public in and for the State of South Carolina
commencing at 11:05 A.M. on October 3, 2016, at the office
of Charles T. Brooks, III, 309 Broad Street, Sumter, South
Carolina.

APPEARANCES

FOR THE EMPLOYEE-CLAIMANT: PRO SE

FOR THE DEFENDANTS: Robert Gruber
Young Clement & Rivers
Post Office Box 993
Charleston, South Carolina

(Donnie Hall also present)

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151

(803) 499-2434

COPY

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Specific Power of Attorney to Endorse and Deposit Settlement Check	Def. Ex. 2
Copy of Check Number 910-079856 dated 12/16/14	Def. Ex. 3

* * * * *

(COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION,
INCOMPLETE PHRASE, TRAILING OFF, INCOMPLETE SENTENCE)

1 The deposition of Charles T. Brooks, III is being
2 taken pursuant to Notice and in accordance with the South
3 Carolina Rules of Civil Procedure and Amendments as adopted
4 by the Supreme Court which shall control the taking of said
5 deposition and its use thereof.

6 Counsel, with the specific consent of the witness,
7 waives the reading and signing of the deposition prior to
8 the time it is filed with the Court.

9 (Charles T. Brooks, III, having been duly sworn, testifies
10 as follows:)

11 EXAMINATION BY MR. GRUBER:

12 Q. Mr. Brooks, my name is Robert Gruber. We've met a few
13 times before. We've had some cases together in the
14 past. I am here to take your deposition today
15 regarding your representation of Ms. Stella Mae
16 Richardson who is present here today related to a
17 Workers' Compensation claim that you represented her
18 on. That is Claim Number 9832206. And the procedural
19 history of this case I believe is familiar to you. We
20 attended a mediation on October 31st, 2014. Following
21 the mediation, we settled Ms. Richardson's claim and
22 we prepared a Clincher Agreement closing out the case
23 for good, and I'm trying to find a copy of that. I
24 thought I had it. But in any event, a Clincher was
25 approved by the South Carolina Workers' Compensation

STELLA MAE RICHARDSON VS. YUASA EXIDE, INC. AND
GREAT AMERICAN INSURANCE COMPANY OF NY

1 Commission in the amount of Twenty Thousand Dollars.
2 (\$20,000.00)?

3 A. Correct.

4 Q. And at some time after that, Ms. Richardson filed a
5 Form 50 requesting a Hearing and seeking to obtain
6 additional benefits outside of the Clincher Agreement,
7 and the record reflects Ms. Richardson's specific
8 allegations. We attended a Hearing in this matter in
9 August before Commissioner Michael Campbell, and he
10 Ordered me to take your deposition to discover whether
11 or not you had represented her properly, I suppose.
12 So, I'm here to effectuate Commissioner Campbell's
13 Order to take your deposition to ask you about your
14 representation of Ms. Richardson as it pertained to
15 this case, to the mediation and to the Clincher
16 Agreement that was approved.

17 A. Okay.

18 MR. GRUBER: I do want to state on
19 the record for the benefit of Ms. Richardson,
20 Ms. Richardson, you are representing yourself
21 through Pro Se. You do have a right to get
22 a lawyer if you want one. That is something
23 you could do; if you wanted to postpone this
24 to get a lawyer, you could do that. If you
25 do elect to proceed Pro Se, you need to

1 understand the way this works is, I'll ask
2 Mr. Brooks questions. You can object to my
3 questions. You have to state your objection;
4 okay. Mr. Brooks can still answer the
5 question, and if we get to another Hearing,
6 what you would do is, you would ask the
7 Commissioner to break open the copy, and
8 you would say -- Gruber asked Charles Brooks
9 this question; I object on the following
10 grounds. And if the Commissioner agreed
11 with your objection, he would take a black
12 Magic Marker and he would scratch out the
13 question and Mr. Brooks' answer. That's
14 how it works. So, if you do make an
15 objection, he's still going to answer it,
16 and we just -- we preserve the objection
17 is what we call it. The other thing you
18 need to remember and you pointed this out
19 or you asked me about this before we went
20 on the record, you are not under oath today.
21 You are not giving testimony. I'm not
22 going to ask you questions. You cannot
23 speak during the deposition of Mr. Brooks
24 except to make objections or except to ask
25 him questions when I'm done. And that

1 also goes for your guest here who is
2 sitting in the -- in the back of the room.
3 So, do we understand the Rules and everything?

4 MS. RICHARDSON: Uh-huh (affirmative
5 response).

6 MR. GRUBER: Okay.

7 MR. BROOKS: Was that yes?

8 MR. GRUBER: Yeah. That's the other
9 thing is, you need to -- everybody needs to
10 give verbal responses.

11 MS. RICHARDSON: Yes.

12 Q. All right. Mr. Brooks, would you please state your
13 full name for the record?

14 A. Charles Thomas Brooks, III.

15 Q. Okay . Mr. Brooks, what is your occupation?

16 A. I am an attorney.

17 Q. Okay. You practice here in Sumter?

18 A. I do.

19 Q. Okay. Tell me a little bit about your practice. What
20 kind of work you do, that sort of thing.

21 A. It's more or less a general practice. We handle
22 Workers' Comp cases. We handle criminal defense,
23 handle Probate matters, a bit of real estate,
24 personal injuries, car accidents, slip and falls.
25 That sort.

1 Q. Okay. And you represented Ms. Stella Mae Richardson
2 in a Workers' Compensation claim; is that correct?

3 A. I did.

4 Q. Is that the only time you represented Ms. Richardson?
5 Have you represented her in anything else?

6 A. I did represent her around the same time of this. She
7 had a slip and fall in Lowe's. I represented her
8 briefly in that by basically submitting her bills to
9 the insurance company or the adjustor for Lowe's. I
10 can't remember if Lowe's is self-funded or they handle
11 their own stuff anyway. I represented her in that.

12 Q. Okay.

13 A. But that's been -- outside of that, there's been
14 nothing else.

15 Q. Okay. And I'm just curious at this point, but was her
16 -- was a suit filed against Lowe's?

17 A. No.

18 Q. Okay. So, it was a situation where they -- they paid
19 some medical bills, that sort of thing?

20 A. We -- we settled it for -- it was a small settlement,
21 very small settlement.

22 Q. Okay.

23 A. Of course, we had dialogue about that.

24 Q. Okay. Okay. When you say you had dialogue about
25 that?

1 A. Dialogue, you know, with Ms. Richardson and the
2 adjustor -- what a lawyer would normally do in any
3 type of accident case.

4 Q. Okay. So, you talked to Ms. Richardson and you talked
5 to the adjustor, and as a result of those
6 conversations, you all ---

7 A. Ended up, we came to a settlement.

8 Q. Okay. Now, let's talk a little bit about this
9 Workers' Compensation claim that we're here on today.
10 When did you, I guess, become Ms. Richardson's lawyer
11 for this case to the best of your recollection?

12 A. To the best of my recollection, I represented her --
13 I think I started representing her in maybe the spring
14 of 2014. I started representing her somewhere around
15 that -- now, obviously, there are letters and Form
16 50's that would specifically clarify ---

17 Q. Correct.

18 A. -- when it was, but that's what's coming to my memory
19 now. I remember the events of getting the case where
20 Ms. Richardson had come in, she had gone to see
21 another lawyer, William Croft, ---

22 Q. Okay.

23 A. -- who does Workers' Compensation in town. And I
24 remember William Croft declined to take the case.

25 Q. Okay.

1 A. I specifically remember Ms. Richardson bringing me a
2 file of materials. Malcolm with the Steinberg Firm,
3 I can't remember -- Crosland.

4 Q. Crosland?

5 A. Crosland.

6 Q. Okay.

7 A. He's a very well respected attorney, does a lot of
8 these Workers' Comp, and particularly these type of
9 cases where there is a lead exposure from -- I
10 remember hearing it advertised, and I actually had
11 some vague familiarity with it because I had a divorce
12 client who I represented in a divorce, finalized the
13 divorce. But I knew there was a settlement because
14 that was part of the divorce, and so, I knew that
15 there was some exposure -- I mean, there was some
16 potential in the cases that were going on. And so, I
17 had a little familiarity from the divorce case. And
18 what I did was, I had the file, asked Mr. Croft why he
19 didn't take it, and he said to the point that -- hey,
20 the Crosland guys, those guys are pretty much money
21 guys and they don't leave any money on the table;
22 they've got to have some kind of lien on it, and, Mr.
23 Gruber, you, being a defense lawyer, a lot of times,
24 what you would do as plaintiff's lawyer, you know, if
25 somebody's got a lien on it, that's -- a prior

1 plaintiff's lawyer, that would kind of be a
2 disincentive for somebody to follow up and take the
3 case because, obviously, the first set of attorney's
4 fees and whatever settlement would go to the first
5 lawyer. I actually had called Mr. Crosland, and he
6 indicated to me that he had a lien on the file.
7 That's what his first initial response was.

8 MS. RICHARDSON: (Shakes her head
9 negatively).

10 MR. HALL: No.

11 Q. I'm sorry. I'm sorry.

12 MS. RICHARDSON: I object to that.
13 There's no -- there wasn't no lien. No
14 lien.

15 A. If I can finish explaining.

16 MR. GRUBER: Your objection is noted.

17 You can answer.

18 A. And what happened -- that's what he told me. Okay.
19 And I actually had Stella in my office and got him on
20 the phone, and he said, "It is a lien." And then I
21 came back to Stella and Stella said, "No, I never had
22 a lien on my file. There was never an offer in the
23 case." And actually, I came back to Malcolm Crosland
24 and he -- he said, "You know what, Charles, let me
25 think a minute." He said, "You know what; I'm

1 probably getting that confused with a couple others.

2 I think there might not have been a lien. Let me
3 double-check my file." And maybe a couple days later
4 or a day or so later, he sent me an e-mail confirming
5 he did not have a lien on the file. Okay?

6 Q. Okay.

7 A. And then I -- I began undertaking representation of
8 Ms. Richardson.

9 Q. Okay.

10 A. Got the entire file from the Workers' Comp Commission.
11 Had -- Stella was continuously coming to the office.
12 She was a frequent visitor in here.

13 Q. Okay.

14 A. There was a great deal of attorney/client conversation
15 with her. She would come in routinely. She would
16 call the office routinely. She'd talk to my assistant
17 a lot, and, you know, she was ---

18 MS. RICHARDSON: I object to that now.

19 I'd come in the office, but he wasn't here.

20 I had a phone call with him, but I never
21 actually seen him.

22 A. I met with her on numerous occasions. She did come
23 in. Sometimes. I might not be here. Obviously, I'm
24 a lawyer who might be in Court doing various other
25 things. She would communicate -- if I wasn't here,

1 she would communicate with my assistant, a paralegal,
2 on the file, Sherry Wharton. And then there were
3 times I would talk to her on the phone. The point I'm
4 trying to make is, we had a very open line of
5 communication. It was never any issue about my
6 communicating with her, my staff communicating with
7 her; she'd bring files in, whatever documents she had.
8 There was never any issue about that.

9 Q. So, let me ask you this. After you took this file and
10 became her lawyer, it -- it sounds like either you or
11 your office or both had some contact with Ms.
12 Richardson from that time up until the mediation ---

13 A. Oh, absolutely.

14 Q. -- on the 31st?

15 A. Absolutely.

16 Q. So, my question is, what if any conclusions, thoughts
17 and impressions did you form about Ms. Richardson's
18 mental stability or her understanding of the events or
19 issues in the case?

20 A. Her -- my impressions on her were no different than a
21 number of other clients I represented before, around
22 the same time and since. A lot of times when people
23 are hurt, injured, whether it's in a car accident or
24 Workers' Comp, you know, they've had a loss, they want
25 to be compensated; some people are a little more

1 anxious than others to see if we can get them a
2 settlement -- when are we going to get the settlement.
3 It can be in a car accident case. She -- my
4 impression of her was no different than anybody else
5 except she was -- and I've got a couple other clients
6 that come to mind who are no different; you know, they
7 would call, "Have you heard anything on the case,
8 how's it going, do you think we can get an offer, do
9 you think we can get a settlement, what do you think,"
10 you know, the typical inquiry about what's going on in
11 the case -- "do you think we can get something"?
12 Stella was no different, and like I said, around that
13 time, it may have been before or after the mediation,
14 I think it was before the mediation, she had a slip
15 and fall in Lowe's. And she brought that to me and we
16 got some bills, and I can't remember all of the gist
17 of what her bills were. But I do remember, you know,
18 that Lowe's was denying that they're responsible for
19 the slip and fall, and I explained that case to her
20 and I said, "Hey, this is what they're willing to
21 offer" and looking at it as a nuisance value. And I
22 remember giving her the settlement because it was a
23 very small settlement, but it was around the same time
24 as this was concerned. So, but that was no different.
25 She was no different in that case than she was on this

1 case which is no different than most of the other
2 clients I represent; there was nothing out of the
3 ordinary as far as representing her in the sense of
4 her calling like any other person that I have an
5 accident case on, whether it was Workers' Comp or
6 accident case. Nothing out of the ordinary.

7 Q. Did you ever -- did you ever believe or suspect or
8 think, based upon your interactions with Ms.
9 Richardson, that she was unable to or incapable of
10 understanding how her case and the issues that were
11 present in her case or the process?

12 A. No, not at all.

13 Q. Okay.

14 A. Never had any doubts about that in all of my dealings
15 with her.

16 Q. Did you have any contact or communication with any
17 members of her family? I think her daughter?

18 A. All of my communication with Stella was with Stella.

19 Q. Okay.

20 A. The only time that, you know, maybe her daughter might
21 have -- one daughter might have accompanied her one
22 time, but never in sitting in this conference room
23 about her case. The only times that I can really
24 remember her daughters is they -- they brought her to
25 Columbia. They came along with her to Columbia when

1 we had the mediation.

2 Q. Okay.

3 A. In the office that Mills Gallivan had. He was the
4 mediator. And they waited out in the -- in the lobby,
5 sat out there, and, of course, you know, a big firm
6 like that, they had certain things to eat and, of
7 course, they were cordial and told them where they
8 could go and get juice and whatever pastries they had
9 to eat. And, of course, Stella and I were in one
10 conference room and you and your adjustor -- I don't
11 know -- I think you might have had him on the phone;
12 I can't remember. But you were in another room.
13 Okay. And, of course, like you do in mediation, we
14 kind of got together in the very beginning, you stated
15 your position, we stated our position, and then the
16 mediator took you and put you in some other room at
17 some undisclosed location somewhere on that floor and,
18 of course, Stella and I, really, we stayed in the main
19 conference room and, you know, Mills would come back
20 in, and I mean, it was normally what we went through
21 in any type of other mediation. I've done mediations
22 since, Family Court, Civil Court; it was -- it was
23 nothing that stood out except, you know, at the very
24 end, you know, Stella had told her daughters, you
25 know, -- I settled the case and this is what I settled

1 for. One of the daughters had come in, and I had
2 explained it to Stella like I do with any other
3 clients -- "Are you sure this is what you want to do"
4 and explained the pros and cons. And Mills explained
5 the pros and cons.

6 MS. RICHARDSON: Excuse me. My daughter
7 was not in that room for no mediation.

8 MR. BROOKS: No. What I -- what I said
9 was, she wasn't there when you were going
10 through the process.

11 MS. RICHARDSON: And she wasn't after --
12 she wasn't there after I signed anything either.

13 MR. BROOKS: At the very end ---

14 MS. RICHARDSON: She was not there. You're
15 lying on her.

16 MR. BROOKS: At the very end, she was in
17 the lobby at the very end when we were getting
18 ready to go; we were done, and I think Mr. Gruber
19 had written out the terms of the mediation that
20 -- I don't know if he's able to find it. He had
21 written it. You had already signed it. It was
22 already done. We were getting ready to go, and
23 that's when you had mentioned to your daughter --
24 your daughter was not involved in all of this; I
25 agree with you -- she was not in the room when we

1 were going through it.

2 MS. RICHARDSON: I don't -- I don't recall
3 mentioning anything to my daughter in front of
4 you of what I settled for.

5 MR. BROOKS: I do.

6 MS. RICHARDSON: I don't.

7 MR. BROOKS: I do.

8 Q. I tell you what, let me -- let me get back to your --
9 you -- I'm going to take that as an objection. That's
10 noted, but I want to get back to the mediation now.
11 I've got a couple questions for you. First of all,
12 did you speak with Ms. Richardson during the course of
13 the mediation? I'm not necessarily talking about
14 conversations that Mills Gallivan may have had with
15 her and you, but did -- did the two of you ---

16 A. Oh, absolutely.

17 Q. Tell me a little bit about what you all talked about
18 and also what her -- again, I want to try to get back
19 to her -- her mental state at that point, what her
20 expectations were and that sort of thing.

21 A. We discussed, you know, we were trying to get -- was
22 no different than any other client -- we were trying
23 to shoot for the moon so to speak. I can't remember
24 what we had demanded, but I think we had demanded
25 like, started off very high, which is not unusual. I

1 want to say a Hundred Thousand Dollars (\$100,000.00)
2 we started off with. But I had recognized that, you
3 know, we had -- we had some difficulties in the case
4 because it was going to be difficult for us to prove,
5 you know, her problems were related to these lead
6 allegations, because a lot of the people that had
7 these problems and had bigger settlements like the one
8 that I had on the divorce case, as -- and Mills
9 Gallivan kind of confirmed this, is that they were
10 having kidney problems. That specifically was what
11 was driving it, and he explained it and I explained it
12 to Stella in his presence and he explained it and
13 outside of his presence is that this is what we were
14 -- you have got some difficulties in terms of being
15 able to prove.

16 MS. RICHARDSON: Excuse me.

17 A. And ---

18 MR. GRUBER: Yes, ma'am?

19 MS. RICHARDSON: He did not know
20 anything about -- anything about the case
21 at Exide or the effect or anything. I
22 had to tell him everything. I had to give
23 him all of the paperwork. He never really
24 filed anything, and I would like a breakdown
25 on the paperwork that he gave Workman's --

1 the Workman's Comp Commission. He did not
2 know what Exide -- what the lead affected
3 because he never had the time to go
4 through anything because he was having a
5 problem himself with the idea of -- I've got
6 the paperwork, which during that time, --
7 during that time you was going to Court
8 yourself for doing some things you didn't
9 supposed to have been doing. So, you didn't
10 have time to work on my case like that,
11 and I -- I didn't explain anything to you
12 about anything like that because you didn't
13 talk to nobody in front of me about no
14 kidney effect about Exide Battery.

15 MR. GRUBER: Okay. I'll take that as an
16 objection.

17 MS. RICHARDSON: You didn't -- and who
18 did you talk to, you say?

19 A. Robert, are you still asking questions or do you want
20 me to answer? What -- how do you want to do this?

21 MR. GRUBER: I tell you what, let me --

22 Ms. Richardson, I think the best way to do
23 this is, you can ask him questions when
24 I'm done. You can continue to -- to make
25 objections. I think that's perfectly fine,

1 but I was sent here by the Commission to try
2 to sort these things out. I just want to
3 try to get through these questions to figure
4 out what happened, and I know that you and
5 Mr. Brooks have a -- have a difference of
6 opinion as to what happened. We're clear
7 on that. So, if I could just kind of move
8 forward.

9 Q. Well, Mr. Brooks, let me ask you this. Did you
10 discuss with Ms. Richardson just the basics, the fact
11 that she can go to a Hearing and lose the case, she
12 can go to a Hearing and win the case?

13 A. Yes. Yes. And she had a bird in the hand versus
14 three in the bush. When we -- we went through all of
15 that with the two of us and with Mr. Gallivan. When
16 he was outside the room, I assumed Mills was going
17 back to talk to you; she and I discussed that.

18 Q. Okay.

19 A. We discussed it, and then from the standpoint of -- --
20 -- hey, this is that they're willing to offer; if you
21 go to a Hearing, the Commissioner could rule against
22 you and say -- hey, this, -- you know, I don't see any
23 causation here. Okay. And, obviously, that would put
24 her in a position where she would get little or
25 nothing. So, that's what we would continue to discuss

1 as we were also continuing the process of presumably
2 having Mills come back to you to say -- you were
3 sending him back saying -- this is what we're willing
4 to offer and we kind of haggled, which is normally
5 what we do at mediations, and when we arrived at
6 Twenty Thousand Dollars (\$20,000.00), he said, "It
7 ain't gonna be no more now; that's it. This is going
8 to settle it, that's it." And I said to Stella, I
9 said, "This is it. Take this what we've got; this is
10 a bird in the hand. If you go forward in the Hearing,
11 you could lose this and not get anything." And Mills
12 explained that to her, too. Okay. I specifically
13 remember him explaining it because he had done a large
14 number of these cases himself and, as you recall,
15 Robert, Mills knew more about the vast majority
16 because he had done probably twenty-five (25) of these
17 cases with Exide and various other Claimants, because
18 I specifically remember -- I specifically remember
19 your assistant contacting us and saying, "Hey, why
20 don't you call Malcolm and see if you can stick your
21 case in; we're doing a whole bunch of mediations down
22 in Charleston," and that was your idea. And when I
23 called them, they were like, "Nah, we're not going to
24 let you do that," because they didn't want to give up
25 their time, they being Malcolm Crosland. I totally

1 understood that. And then you and I had arranged for
2 Mills because I think Mills was in Greenville -- we
3 met at their office in Columbia. So, he -- he
4 actually had a great wealth of knowledge about the
5 cases themselves, and he explained it more thoroughly
6 and he explained it in comparison to other people,
7 like, the guy that I mentioned about having during the
8 divorce. He was explaining about those people and he
9 was talking about the way he saw those peoples' cases
10 being much more -- worth more because they had kidney
11 problems that were clearly related to the lead, and he
12 -- he explained that and he explained it in terms of,
13 "We don't have in your case, Ms. Richardson, -- it's
14 not a whole lot, how can you say this is causal
15 relationship with the lead. That's the problem,
16 Charles." He explained that. And then I would come
17 along and I was explaining to her what he said. This
18 is what he's talking about, and I would explain it as
19 he would leave the room and go back and, you know,
20 talk to you.

21 MS. RICHARDSON: Okay. When he left
22 the room and then I told him I said, "I'm
23 getting ready to go to surgery." And he
24 said, -- I said, "I think I need to wait
25 because they're not sure if it's cancer or

1 not, thyroid cancer." So, he didn't put
2 that into consideration at all. He still
3 went on for -- for me to go on with the case
4 -- and just go on with the case. And right
5 after that, I called him, after I did the
6 surgery -- it was January 26th. I called him
7 and tell him I had breast cancer. He told me
8 he wasn't going back to Court. But I did let
9 him know there's a possibility that I had
10 some type of cancer going on before the
11 mediation, that it might have been cancer in
12 my throat.

13 A. The issue was whether or not her problems were going
14 to be related to Exide. That was always an issue.
15 And I asked her, "Is your doctor willing to say that"?
16 I've never seen since then and up until today, I've
17 never seen any medical report saying that the cancer
18 that she's referring to is related to the problems at
19 Exide. I've never seen anything that would say that,
20 and having done this as long as I have, you start to
21 anticipate where a Defense lawyer is going to go.
22 Knowing you and knowing that's where you would -- any
23 Defense lawyer is going to go -- can you break this
24 down, how is this related to -- is the doctor saying
25 that? And there was never any medical evidence that

1 said her problems with cancer were related to the
2 problems at Exide. I have never seen that. I don't
3 know if you have. I have never seen anything prior to
4 mediation, at the mediation, or even since then; I
5 have not seen anything that said this was connected to
6 Exide. I just haven't.

7 Q. During your communications and dealings with Ms.
8 Richardson during the course of that mediation, have
9 you -- did you have or get the impression that she
10 understood that a settlement would end the case?

11 A. Yes.

12 Q. Okay. Tell me about those conversations.

13 A. "If you take this, it's over with. Can't do nothing
14 else. Do you understand that?"

15 Q. All right. And did ---

16 A. I just -- that -- that's an example of what I said.
17 "You understand that? That's it. Take that, that's
18 it. Can't come back to them no more." Now, that's
19 the conversation we had.

20 Q. Okay.

21 A. I don't know any other way that that could be
22 interpreted other than the way I just described it.
23 So, it was -- now, it was obviously in a much more
24 detailed manner. "If you sign this, this is it. This
25 is over."

1 Q. I'm going to show you what I'm going to admit as
2 Defendant's Exhibit One. Can you identify that
3 document?

4 A. This is the Settlement Agreement on October 31st, 2014
5 that you wrote up. Mills Gallivan was present. I
6 signed it, she signed it, you signed it. And more
7 often than not, Mr. Gruber, we do this even if we
8 don't have all the paperwork signed because that might
9 -- a lot of times, we do it so that everybody
10 understands when we are leaving the table on this day,
11 and this day happened to be on October 31st, that this
12 was it.

13 Q. Okay.

14 COPY OF SETTLEMENT AGREEMENT DATED
15 10/31/14 MARKED DEFENDANT'S EXHIBIT
16 NUMBER ONE.

17 A. And that was my understanding. I communicated that to
18 her. That was Mills Gallivan's understanding. He
19 actually communicated that to her along with me
20 sitting there. Okay. So, not only did she have one
21 lawyer, who was her lawyer, explain that to her, but
22 Mr. Gallivan did explain that to her as well.

23 Q. Okay. When you say, "Explain that to her," ---

24 A. Explain that this was a Clincher, that this was it,
25 you're signing this, this is going to end it; they're

1 going to give you Twenty Thousand Dollars
2 (\$20,000.00), and this is going to end your Workers'
3 Comp case with -- I can't even remember the name of
4 your insurance company that you were representing at
5 the time.

6 Q. Mitsui Sumitomo, we're talking about.

7 A. That's okay.

8 Q. Right.

9 A. And that was going to end it. I mean, there was -- it
10 was clear. I didn't see any ambiguity in what I said
11 to her as well as what he said to her. It was ---

12 MS. RICHARDSON: Excuse me ---

13 A. -- normally what we ---

14 MS. RICHARDSON: He -- he told me that
15 there would have been money set aside, that
16 I would have a certain amount set aside in --
17 with Social Security, but I wouldn't have
18 to worry about that because if I go with
19 less, he said that would keep me from my
20 check being cut off and -- but I still would
21 have money set aside in an account for
22 Medicare to pay for anything come up after
23 the Hearing.

24 Q. You know, I've been trying not to do this, but I do
25 want to follow up on Ms. Richardson's statement or

1 objection. Did you all have a conversation about
2 Medicare, Medicare set-asides, that sort of thing?

3 A. We did. We had the conversation together, and then I
4 had the conversation with you.

5 Q. Yes, sir.

6 A. Because we had to find out if there was going to be a
7 Medicare set-aside; okay. And that's actually what
8 delayed you processing the settlement because, if I
9 recall, it was October 31st, next day being November
10 1st, and I want to say maybe a week or two later, you
11 know, Ms. Richardson started inquiring -- "Has the
12 check come, has the check come," which is not unusual
13 for clients.

14 Q. When you say she inquired, would she come by the
15 office or telephone calls; do you remember?

16 A. She may have come by. It may have been -- I know she
17 inquired. She communicated, whether it was a phone
18 call -- she would call me; if she didn't get me, she'd
19 talk to my assistant, Sherry, and then we sent emails
20 to your assistant. I believe her name was Donna.
21 Okay. And then you and I got on the phone and you
22 realized -- "Hey, tell her we are going to do the
23 Medicare set-aside, but we need to find out." I told
24 you -- I think you actually said, "Hey, man, I totally
25 dropped the ball on it. Let's -- let's go ahead and

1 look into that." And then we realized there wasn't
2 going to be a Medicare set-aside because she didn't --
3 Twenty Thousand Dollars (\$20,000.00) wasn't over the
4 threshold. So, there wasn't going to be a set-aside.
5 So, she didn't have to worry about -- she was going
6 get all of the money. There was not going to be any
7 money set aside; so, she was going to get all of her
8 money because the issue was is part of that Twenty
9 Thousand Dollars (\$20,000.00) going to be taken out
10 for that Medicare. That was the issue, and once we
11 had delays in it and then once you had -- we -- we
12 kind of got back into it, determined that, then you
13 went ahead, contacted your company for them to go
14 ahead and start processing it. Then we got into, you
15 know, as we usually do in the practice of law, once
16 you get into November, you're usually kind of working
17 with one week down because you've got Thanksgiving,
18 and so, things drop. I'm sure you went on your
19 Thanksgiving holiday and dropped. So, then we kind of
20 got back up together. You know, after December, we
21 got into the month of December and then you sent me
22 the Settlement document, but I specifically remember
23 you telling me that your company didn't want to send
24 the money until they got the settlement approved and
25 documents signed. So, we got the Settlement documents

1 and I had, you know, Stella come in. She came in; we
2 went through them again. Okay. We went through them
3 as far as, "This is it, there's not going to be a set-
4 aside, this is ending the case just like we signed
5 it".

6 MR. GRUBER: Do you have a copy of
7 that Clincher, the one that was approved?

8 MS. RICHARDSON: Uh-huh (affirmative
9 response). Right here. We didn't went over --
10 we didn't went over anything about a set-aside
11 or approval or anything after the fact.

12 MR. GRUBER: Okay.

13 MS. RICHARDSON: But before I met you and
14 before -- you didn't tell me anything about you
15 and Attorney Gruber discussing anything about a
16 set-aside. You didn't tell me anything about
17 that now.

18 MR. GRUBER: Okay. Can we go off the
19 record for just a second?

20 (OFF THE RECORD).

21 EXAMINATION BY MR. GRUBER CONTINUED:

22 MR. GRUBER: Ms. Richardson, I just
23 wanted to clarify something for you. What
24 Mr. Brooks just said is correct. We did --
25 he and I did have a discussion about Medicare

1 set-asides after we settled the case. My
2 company uses a separate law firm in Alabama
3 to deal with all the Medicare issues. And
4 when I contacted that firm and talked to them,
5 they indicated that the settlement amount of
6 Twenty Thousand Dollars (\$20,000.00) was
7 below the review threshold that Medicare
8 would use. In other words, we -- we could
9 do a Medicare set-aside, but Medicare would
10 not review it because it fell below Twenty-five
11 Thousand Dollars (\$25,000.00); the settlement
12 did. That's what he's talking about. That's
13 what ---

14 MS. RICHARDSON: That wasn't my
15 understanding with him. He told me that money
16 will be in an account for me if I get sick
17 again, money will be in that account for me,
18 that I had nothing to worry about.

19 MR. GRUBER: Okay. And again, I don't --
20 I don't know what you all discussed, but I
21 just wanted to clarify for the record that
22 Mr. Brooks and I ---

23 MS. RICHARDSON: Because I didn't even
24 know -- he didn't tell me that you all
25 communicated.

1 MR. GRUBER: Okay. Well, in truth -- in
2 truth, the fact that you don't have an MSA is --
3 is totally and completely and perfectly legal
4 and proper in this case because it's -- it's a
5 doubtful and disputed settlement. In other
6 words, we're not admitting any liability, and
7 the settlement amount falls below that amount
8 that CMS would review. So, ---

9 MS. RICHARDSON: He didn't tell me that.

10 MR. GRUBER: Okay. Then again, I don't
11 know -- I don't know what you all -- I just
12 wanted to let -- I just wanted whoever reads
13 this deposition transcript to know that,
14 you know, ---

15 A. And I'm just saying, since we're on the record,
16 obviously, that's not the way that I remember it. I
17 remember going over everything with her. And as a
18 matter of fact, that would have been to her benefit
19 because, otherwise, you guys or your insurer would
20 have deducted money out of the Twenty Thousand Dollars
21 (\$20,000.00). She would have gotten less money
22 because that would have been money they would have
23 inevitably would have sent to Medicare. Okay. So, I
24 explained that to her because that way she was getting
25 the most money. She wasn't having anything taken out

1 of her check.

2 Q. I'm going to show you a document to be marked
3 Defendant's Exhibit Two.

4 MR. GRUBER: And, Ms. Richardson, this
5 is your copy. I don't want to submit your
6 copy as an Exhibit unless you want me to,
7 but can I show this to him? I just want
8 to ask him some questions, and then, if it's
9 okay with you, if I can go ahead and get a
10 copy for my file and send it to the court
11 reporter.

12 MS. RICHARDSON: No, I would like that
13 myself. He would have to get it -- he have
14 the documents here.

15 MR. GRUBER: Okay. Can I go ahead and
16 just ask him some questions ---

17 MS. RICHARDSON: You can ask him some
18 questions, yes.

19 MR. GRUBER: Okay.

20 Q. I'm going to show you a document that -- well, I'm
21 going to show you a document. Just look at it and
22 tell me what that is.

23 A. This is the Order Approving Settlement that's signed
24 by the Workers' Comp Commissioner at the time.
25 Attached to it is the Petition -- excuse me -- the

1 Settlement. I signed and Stella signed, you signed.
2 And you sent it, -- like I say, it was after
3 Thanksgiving it was sent. The second I got it in
4 here, we called her, we got her in, went through it
5 all and, of course, she has a copy.

6 MS. RICHARDSON: I never seen that
7 copy until after I got my check. I got
8 the check and then I got the Order.

9 MR. BROOKS: But you came in and you
10 signed it and we went over it. And it was
11 no different ---

12 MS. RICHARDSON: You didn't went over
13 nothing ---

14 MR. BROOKS: --- it was no -- ma'am, ---

15 MS. RICHARDSON: You were never here.
16 You never went over nothing.

17 MR. BROOKS: I went over this with you,
18 Ms. Richardson. I went over this with you
19 in this very room. You sat in this chair
20 that I'm sitting in now, and I sat in this
21 chair where the court reporter is. And I
22 went through it with you. And you signed
23 it. There was nothing unusual that I don't
24 do -- haven't done countless times with
25 other clients. I did that with you. And

1 I specifically remember doing it with you
2 because you were a client you needed to
3 talk to me a great deal, and we went through
4 this. You and I went through this document,
5 which was an expanded, detailed version of
6 the written settlement that Mr. Gruber wrote
7 up on Halloween, 2014.

8 MS. RICHARDSON: Let me tell you --
9 let me tell you something. If I know --
10 knew what was in that Order, I would have
11 never accepted the Twelve Thousand Dollars
12 (\$12,000.00) your secretary handed me ---

13 MR. BROOKS: She handed you -- she handed
14 you the check, yes.

15 MS. RICHARDSON: Yeah, because you wasn't
16 here.

17 MR. BROOKS: Yes, that was after though.
18 We did all of this before you received the
19 check.

20 MS. RICHARDSON: I didn't get that -- I
21 didn't get that until after I got the check.

22 MR. BROOKS: But you came in and you
23 and I went through it.

24 MS. RICHARDSON: Okay, I got the check
25 first or I -- did I got that first?

1 MR. BROOKS: Ma'am, I -- we went ---

2 MS. RICHARDSON: I said, "Did I got the
3 check first or I got the Order first"?

4 MR. BROOKS: Ms. Richardson, we went
5 through all of this ---

6 MS. RICHARDSON: Before the check or
7 after the check?

8 MR. BROOKS: We went through this before
9 the check.

10 MR. GRUBER: (To Ms. Richardson). I'm
11 just going to show this to help him.

12 MS. RICHARDSON: Go ahead. Show it --
13 show it to him.

14 MR. GRUBER: Okay.

15 MR. BROOKS: You and I went through all
16 of this with the check.

17 MS. RICHARDSON: No, we didn't.

18 MR. BROOKS: Before the check arrived.

19 MS. RICHARDSON: Uh-uh (negative response).

20 MR. BROOKS: We went through this because
21 his office would not send us the check until
22 it was approved by the Commission.

23 Q. I'm going to show you -- that will be marked as
24 Defendant's Exhibit Two.

25 COPY OF CHECK MARKED DEFENDANT'S

1 EXHIBIT NUMBER TWO.

2 A. And this is -- this is the check that came in. I
3 signed this check after having her sign a POA because
4 I did not want her check to have to be held. She had
5 already signed ---

6 MS. RICHARDSON: What's a -- what's a
7 POA?

8 MR. BROOKS: Power of Attorney. I'm
9 sorry.

10 A. It's a Power of Attorney, because I had drafted a
11 Power of Attorney when we got those documents because
12 we knew we were getting around to Christmas time and
13 that I didn't know if her check would be held from the
14 moment I got it because your office said you would not
15 send the check until all of the documents with the
16 Commission were -- were approved by the Commission,
17 and when we got the documents, we normally attach our
18 Form 61, which is a breakdown of where the fees are
19 going to go.

20 MS. RICHARDSON: Here you go. I don't
21 have no breakdown.

22 A. That's the Form 61. That's what I mean by breakdown
23 of the fees.

24 Q. Let me ---

25 A. I remember Ms. Richardson asking about this other copy

1 fee to the Workers' Comp Commission because they
2 charged me a fee for getting their file, and I got an
3 Invoice to show her that's where that money went. So,
4 we went through all of that.

5 MS. RICHARDSON: I would -- I would
6 like to ask a question. Why would -- why
7 would you would have to sign a document
8 for me if I'm still residing in Sumter
9 County?

10 MR. BROOKS: Ma'am, all that was to do
11 was to make sure your money wouldn't be
12 held and I have to wait for you to come
13 in. That's all that was.

14 MS. RICHARDSON: Okay. But ---

15 MR. BROOKS: To ---

16 MS. RICHARDSON: -- this document said
17 I don't live in Sumter County -- Sumter,
18 South Carolina.

19 MR. BROOKS: Ma'am. all that was was ---

20 MS. RICHARDSON: Explain that to me. You
21 say I don't live in Sumter, South Carolina?

22 MR. BROOKS: Ma'am. Ma'am, all that
23 document was you giving me express permission
24 to make sure ---

25 MS. RICHARDSON: That's a lie there.

1 It say, I don't live in Sumter, South Carolina?

2 MR. BROOKS: Ma'am, ---

3 MR. GRUBER: (To Ms. Richardson). You
4 need to let him finish his answer.

5 MR. BROOKS: Ma'am, that document was
6 you giving me express permission so that I
7 could deposit the check so that I could give
8 you your check immediately because his office,
9 his insurer, would not send the check with
10 the Settlement documents simultaneously.
11 Their position was we, Robert Gruber -- his
12 insurer's position was they were not going
13 to send the funds until all of these documents
14 were signed and executed and approved by the
15 Commission. That's all that was.

16 Q. I want to get us back on a time-line here.

17 A. Okay.

18 MS. RICHARDSON: Yeah, I want to get
19 back on a time-line right with this.
20 This document said that "I, Stella Richardson,
21 no longer reside in Sumter and I am unable
22 to personally appear at the law office at
23 Charles T. Brooks." Now, you just say a few
24 minutes ago that I was here several times,
25 and you seen me several times. So, if I

1 was out of town and no longer residing in
2 Sumter, South Carolina, how it was I was
3 able to document all the documents you
4 said that I document?

5 MR. BROOKS: Ma'am, that document was
6 signed with these documents so that we
7 would not have to wait and I could get the
8 check immediately and deposit it. That's
9 all that was.

10 Q. Okay. I'm going to show you a couple of things. I'm
11 going to go back to the Clincher Agreement. Mr.
12 Brooks, if you could go through those documents and
13 let us know when or about when your office received a
14 copy of this -- of the Clincher documents.

15 A. It was -- this is what I can tell you. Your letter to
16 the Workers' Comp Commission is December 8th, 2014; it
17 was signed and approved December 10th, 2014. We would
18 have gotten this right after Thanksgiving. Right
19 after Thanksgiving. Which particular day, I'd have to
20 look back ---

21 Q. Okay.

22 A. -- you know, but we got it.

23 Q. So, it went to the Commission December 8th?

24 A. Right.

25 Q. Okay. When -- is there a -- is there an indication,

1 a stamp or anything on that that indicates when it was
2 approved by the Commission?

3 A. December 10th, 2014.

4 Q. Okay.

5 MS. RICHARDSON: And can I ask a
6 question? Was your Fee -- Form 61 filled
7 out before the approval or after approval?

8 MR. GRUBER: I don't know.

9 MS. RICHARDSON: Because -- their
10 document say December 10th. This say
11 December 5th. So, the document haven't
12 been approved yet for the check before
13 I signed for the check.

14 MR. BROOKS: What happened is, you
15 signed that when we got the documents
16 from him, because in order for the
17 Commission to approve it, we had to get
18 everybody to sign it.

19 MS. RICHARDSON: Sign what?

20 A. The Clincher that he just pointed out to me and I --
21 when I get the Clincher, I usually have -- I have
22 people ---

23 MS. RICHARDSON: What I'm saying, you
24 get people to sign a 61 before they get the
25 Order approved?

1 MR. BROOKS: I get people to sign the
2 Form 61, to sign the Clincher, to sign all
3 the documents and have it ---

4 MS. RICHARDSON: When I -- answer my
5 question.

6 MR. BROOKS: I have them all executed
7 at the same time.

8 MS. RICHARDSON: Answer ---

9 MR. BROOKS: I have them all executed at
10 the same time. I believe I am answering
11 your question.

12 MS. RICHARDSON: No, you're not.

13 MR. BROOKS: Yes, I am.

14 MS. RICHARDSON: I asked ---

15 MR. BROOKS: I had the document

16 MS. RICHARDSON: -- I had the under-
17 standing ---

18 MR. BROOKS: Ma'am, I'm answering your
19 question. I had -- no, no. I had the
20 documents signed by you at the same time
21 that we signed the Clincher Agreement.

22 Q. Okay.

23 MR. BROOKS: We signed the Form 61;
24 we signed the Clincher Agreement at the
25 same time.

1 MS. RICHARDSON: Okay. The Order --
2 the check -- the Commissioner approved
3 the Order on the 10th. Okay. We signed
4 the paper on the 5th. How in the world
5 can I sign for something on the 5th ---

6 MR. BROOKS: No, no.

7 MS. RICHARDSON: -- if I didn't get my
8 Order -- the Commissioner didn't approve it
9 until the 10th.

10 MR. BROOKS: No, no. You signed the
11 Form 61. This was approved by the Commission
12 on the 10th.

13 MS. RICHARDSON: The 10th. And this was
14 signed on the 5th.

15 MR. BROOKS: Signed by you on the 5th.

16 MS. RICHARDSON: Why was it signed on
17 the 5th before the check was approved and
18 the -- the Clincher Agreement was approved?

19 MR. BROOKS: Why was it signed by you?

20 MS. RICHARDSON: Okay.

21 MR. BROOKS: I'm not understanding
22 the question.

23 MS. RICHARDSON: I'm asking what come --
24 does the Order come first; does the Approval
25 Order come first or does signing the Form 61?

1 I signed Form 61 before I get the Order
2 of Approval?

3 Q. I tell you what, why don't -- why don't I do this.
4 Why don't I ask Mr. Brooks what his procedure is.

5 MS. RICHARDSON: Yeah. Ask him what
6 his procedure is.

7 Q. Okay. Why don't we do this. Mr. Brooks, there's an
8 obvious dispute as to ---

9 A. And I want to make sure we're clear. We may have to
10 reconvene. I've got a Guilty Plea in Columbia at
11 2:30.

12 Q. Okay. I just -- okay. I'm going to -- I'm going to
13 try to ---

14 A. Okay.

15 Q. If we need to reconvene, we can do that on my dime;
16 so, it's -- it's, you know, ---

17 A. I understand.

18 Q. -- when you settle a case, in other words, when you
19 settle a case, when you receive Settlement documents,
20 can you -- can you give me an idea about what your
21 process is about reviewing them with your client,
22 getting them signed; what process, if any, do you use?

23 A. The process is, is you have everybody sign -- you
24 would have the client come in and sign the documents.
25 I would have the client come in and sign the

1 documents. In a Workers' Comp case, obviously, you
2 being a Defense lawyer, you would send me the
3 Clincher, Order, the forms to sign. It's my
4 responsibility to do the Form 61 which talks about the
5 fees and costs that come out of there. When I get the
6 Clincher Agreement from the Defense lawyer, you in
7 this case, all I do is then, I ask -- we work up the
8 Form 61, which is the breakdown of the disbursements.
9 It doesn't make sense to have the client come in, sign
10 a set of documents one day and a set of documents the
11 next day. It makes perfect sense to get everything
12 done at the same time, and that's all we did.

13 Q. So, -- and according to the cover letter signed, that
14 I signed on December the 8th, sending the signed
15 Clincher off to the Commission on December 8th, we
16 would have to assume that if you met with Ms.
17 Richardson to review the Clincher Document, you would
18 have met with her prior to December the 8th because I
19 had it by that point?

20 A. Correct.

21 Q. Okay.

22 A. Now, in fairness, I -- I think what I do -- I don't
23 send the Form 61 back to you, because what my fees are
24 really is not material to you. We may have gone ahead
25 and sent that on with the Workers' Comp Case Number to

1 the Commission knowing that you were already going to
2 send the signed Clincher because then you needed to
3 sign it. Once I sent it back to you, your letter
4 indicates you in turn send it there.

5 MR. GRUBER: Can I just -- can I hold
6 this?

7 MS. RICHARDSON: Uh-huh (affirmative
8 response).

9 Q. Okay. All right. I'm going to show you a document
10 and again I'm not going to admit this because this is
11 your copy, but I'm just going to show you this
12 document. Can you identify that?

13 A. This is the Form 61 that I routinely get clients to
14 sign on Workers' Comp cases where there's some type of
15 lump sum award, and this is the one in which Ms.
16 Richardson signed and it tells us we got together on
17 December 5th and, as I indicated before, it was
18 shortly after Thanksgiving holiday as you recall;
19 Thanksgiving kind of rolls into a four day weekend.
20 And there was nothing unusual about this.

21 Q. Did Ms. Richardson sign that in your presence?

22 A. Absolutely, she did.

23 Q. And what ---

24 A. Sitting right here in this office.

25 Q. What is the date of the signature?

1 A. December 5th, 2014.

2 Q. I'm going to show you another document. Will you
3 please -- I'm going to show you -- will you please
4 identify this document?

5 A. This is a specific Power of Attorney that just gives
6 me permission to endorse the check so it wouldn't have
7 to be held and we had her sign that on December 5th,
8 2014 so that I wouldn't have to -- as soon as I got
9 that check from you, I could get it in the bank and
10 make sure I didn't have to deal with any holds so that
11 when I called her to say -- I've got your money, it
12 would be freed up. I wouldn't have to worry about any
13 issues with the bank. That's -- that's the only
14 reason, because I did -- I wanted to make sure we were
15 trying to get Ms. Richardson her money prior to
16 Christmas.

17 Q. So, you and Ms. Richardson reviewed this document, the
18 Power of Attorney, the Form 61 and the Clincher ---

19 A. The same day.

20 Q. -- on the same day. And correct me if I'm wrong; it
21 looks like that was December the 5th?

22 A. That's correct.

23 MR. GRUBER: That's Exhibit whatever. Two
24 or Three.

25 COURT REPORTER: TWO.

1 COPY OF SPECIFIC POWER OF ATTORNEY TO
2 ENDORSE AND DEPOSIT SETTLEMENT CHECK
3 MARKED DEFENDANT'S EXHIBIT NUMBER TWO.

4 Q. So, basically, it sounds like you all signed
5 everything on December 'the 5th, but you didn't have
6 the check yet?

7 A. Right. Because -- now, normally, the only thing that
8 was out of the ordinary with this settlement was that
9 you guys didn't send the check. More -- about 90
10 percent of the time, I get the check with the
11 Settlement Agreement, Clincher and all that, and that
12 is the check.

13 Q. Okay. Can you -- can you -- well, that's a document
14 consisting of two pages. Can you identify that for
15 me?

16 A. This is the front and back of the check.

17 Q. Okay.

18 A. And like I -- and like I said, we were making --
19 trying to make sure we got her her money before
20 Christmas.

21 Q. Okay. And what is the date of the check?

22 A. Date of the check is December 16th, 2014, which goes
23 along with what you said, your insurance company,
24 Great American Insurance Company at the time, it's my
25 understanding you said they would not go ahead and

1 process this check until they got all of this taken
2 care of, all of this meaning the Clincher and all of
3 those things. And I explained that to Ms. Richardson
4 on December 5th, because, obviously, like most other
5 clients, she was, "Where's my money, where's my money.
6 Hurry up and get my money." And I explained I didn't
7 have any control over it but that Mr. Gruber's office
8 had indicated that the insurance company was not going
9 to issue the check until they got approval from the
10 Commission, and I believe right after there was
11 approval, they processed the check and I remember
12 getting you to overnight me the check.

13 Q. Okay. Yeah, I don't recall, but ---

14 A. I remember it because I was -- my -- when I say I, my
15 assistant, you know, Stella was continuously inquiring
16 about when is the check coming. And I would have my
17 assistant contact your assistant, and I remember there
18 was that brief period in December -- I'm sure she got
19 tired of hearing -- your assistant got tired of
20 hearing from us, because we were constantly calling
21 about getting that check.

22 Q. And the back of the check, the endorsement, if you can
23 look at that. So, just to make sure the record is
24 clear, pursuant to the Power of Attorney, you signed
25 Ms. Richardson's name?

1 A. So, that I could get the check; that's correct. So,
2 that I could get -- because -- because -- and the only
3 reason -- and -- and just so you know, sometimes banks
4 are funny, depending on the amounts. They might put
5 a hold on it, you know. I've had them in the past,
6 if you put a sizable check in, -- well, we've got to
7 hold it, we've got to hold it, Mr. Brooks. That's the
8 bank's process. It's going to be held for such and
9 such amount of days, such amount of time. So, that's
10 why I did that because, keep in mind, you know,
11 Christmas was coming, and she wanted to make sure she
12 got her money for Christmas. That's the only reason
13 we did that as -- in light of the posture that the
14 company took, your company took.

15 Q. Okay. Ms. Richardson.

16 MR. HALL: Can I say something?

17 MR. GRUBER: You're not really supposed
18 to but ---

19 MR. HALL: Well, and then, as far as
20 holding a check, if I deposit a check into
21 the bank, they always tell you they're going
22 to hold it for a certain period of time.

23 I think everybody should know that.

24 A. Do you want me to answer that?

25 Q. Well, ---

1 A. I put checks in there in the past and sometimes they
2 will hold it, sometimes they don't.

3 MS. RICHARDSON: They hold checks ---

4 A. Sometimes it depends on the bank.

5 MR. HALL: Certain -- certain amount of
6 money.

7 MS. RICHARDSON: A certain amount of money
8 they hold.

9 A. Actually, in her case, they didn't hold the check.

10 Q. Did you ---

11 A. Of course, I didn't know that, but I did -- the only
12 reason I did that was like a precaution ---

13 MS. RICHARDSON: Excuse me. I would --
14 I would like to know -- he said I don't live
15 in Sumter County and he has a Power of
16 Attorney over me because I don't live in
17 Sumter County. I would love to know that.

18 MR. BROOKS: We just -- the whole point ---

19 MS. RICHARDSON: Couldn't you just tell me?

20 MR. BROOKS: -- the whole point of the
21 POA was not whether or not you lived here
22 or not. The whole issue was to make sure
23 we got the check in the Trust Account ---

24 MS. RICHARDSON: No.

25 MR. BROOKS: -- to avoid -- no, I'm

1 answering your question. I'm saying I
2 can't -- whether you live in Sumter County
3 or didn't live in the county, the whole
4 purpose in having the Power of Attorney
5 done was to make sure that, once I got the
6 check from Mr. Gruber, I could get that
7 into the account so that I would go ahead
8 and get whatever clock running in regards
9 to a check being held. If the bank decided
10 to hold her check.

11 MS. RICHARDSON: But why you lie and say
12 that I don't live in Sumter County?

13 MR. BROOKS: Ma'am, I -- ma'am, look.
14 I'll say it again. The POA was done with
15 the specific intent to make sure we got the
16 money into the account ---

17 MS. RICHARDSON: But you ---

18 MR. BROOKS: -- without any hold, any
19 time that the bank would hold it. And in
20 your case, they didn't hold it.

21 Q. Okay.

22 MS. RICHARDSON: Well, they held mines,
23 my deposit.

24 MR. BROOKS: Okay.

25 Q. I have no idea whether or not the check was held.

1 A. But she got -- she got her money.

2 Q. I was going to ask you that. But let me back up a
3 little bit. Did Ms. Richardson ever during this
4 period of time, let's say from the time that you all
5 got the Clincher Agreement on December the 5th until
6 December the 16th when you got the check, did she ever
7 express to you, tell you, make you believe that she
8 did not want to settle her case? I mean, ---

9 A. No.

10 Q. -- do you remember ---

11 A. No. No. She was, "Where's my check? I want to get
12 my money." Never indicated any way during that period
13 of time that she wanted to undo, not go forward with
14 the settlement that we had mediated on October 31st.

15 Q. Did she ever give you any reason to believe that she
16 did not understand the issues that were present in her
17 case?

18 A. No, she did not.

19 Q. And by issues, what I mean are that she had a claim,
20 number one, that by accepting the Twenty Thousand
21 Dollars (\$20,000.00), she was essentially giving up
22 that claim forever. Did she ever indicate to you that
23 she did not understand that?

24 A. No, she did not.

25 Q. During this period of time, and I'm talking

1 specifically about when you reviewed the Clincher with
2 her on December the 5th, and forward, you know,
3 through getting the check and sending her the check
4 and that sort of thing, did you ever get the
5 impression that Ms. Richardson was, I guess, mentally
6 or psychologically incapable of representing her
7 interests as a -- as a client or a claimant?

8 A. No. And to go to that point, we already had that case
9 from Lowe's that we had settled before we got that
10 check.

11 Q. Let's talk a little bit about that.

12 A. Okay.

13 Q. You didn't file any suit with -- against Lowe's, did
14 you?

15 A. No.

16 Q. And yet, she -- she obviously came to you and talked
17 to you about it, about the slip and fall?

18 A. Correct.

19 Q. How did you -- how did you know or I guess how did you
20 get the information that you needed to reach I guess
21 the -- the informal settlement that you did?

22 A. Well, ---

23 Q. I mean, did you go depose anybody?

24 A. No.

25 Q. Okay. Did you go down to Lowe's and talk to anybody?

1 A. No. I talked to, you know, there was an adjustor that
2 was handling the claim.

3 Q. How did you get the adjustor's name?

4 A. I believe Stella gave it to me.

5 Q. Okay. Is it safe to say that Ms. Richardson provided
6 you with the information you needed to -- to run down
7 the settlement of that case?

8 A. I believe so. I believe so.

9 Q. Okay.

10 A. And, of course, you send a letter to the adjustor,
11 recognize you're representing her -- representing the
12 individual. That's how all of that was undertaken.

13 Q. Okay. So, -- so, we've gone from mediation up through
14 the time that you reviewed the Clincher with Ms.
15 Richardson and to the time that you got the check and
16 gave her the money. When, to the best of your
17 recollection, did things, for lack of a better word,
18 go south? In other words, when did you get the
19 impression, the feeling whatever, that Ms. Richardson
20 was not happy?

21 A. She had -- sometime after that, and I can't really
22 recall, obviously, we fall into 2015, but you
23 contacted me and said, "Hey, she's representing
24 herself, she's trying to undo the settlement," and
25 then, of course, you asked me questions. And around

1 that time, you know, I got a -- a fee dispute, which
2 was resolved, and a grievance from the Office of
3 Disciplinary Counsel, which was actually resolved in
4 my favor. She -- prior to that, you know, she wanted
5 her file, which is nothing unusual; so, we made copies
6 of her file and gave it to her.

7 Q. Who asked -- who asked for her file? Did she ask for
8 it?

9 A. She asked for her file.

10 MS. RICHARDSON: Why did I ask for
11 my file -- it was my file. I gave him all
12 the information, which I gave him all the
13 information for Lowe's.

14 MR. GRUBER: I'm sorry. Can you repeat
15 that?

16 MS. RICHARDSON: I gave him all of the
17 information he needed for my Workman Comp
18 case. He didn't had to get no information
19 at all. Just like the Lowe's case, I gave
20 him -- I gave him all my information that
21 I already had before from the time where ---

22 MR. BROOKS: And that's shows she knew ---

23 MS. RICHARDSON: -- Dunbar -- Dunbar ---

24 MR. GRUBER: Vernon, yes, ma'am.

25 MS. RICHARDSON: -- Vernon Dunbar and --

1 and with you and Steinberg, I gave him all
2 that information that you all already given
3 me. He was only copying off what you all
4 already -- I already received from the
5 Steinberg Law Company.

6 MR. GRUBER: Yes, ma'am.

7 A. I -- I took that as her knowing everything about what
8 was going on and competent and aware of what was going
9 on. Perfectly handle -- capable of handling her own
10 things just the way she described it today us sitting
11 here.

12 MS. RICHARDSON: But by you being my
13 attorney, don't you think you supposed to
14 handle everything?

15 MR. BROOKS: Well, I -- to answer your
16 question, I handled everything as far as a
17 lawyer's responsibilities are concerned and
18 you never gave me any impression that you
19 did not understand any of our conversations,
20 the things that were going on with the Lowe's
21 case, the ins and outs, the pluses and
22 minuses of that as well as the ins and outs
23 and the pluses and minuses of this Workers'
24 Comp case.

25 MS. RICHARDSON: Uh-huh (affirmative)

1 response). So, you're saying that the Lowe's
2 case was sort of familiar with the Workman
3 Comp case?

4 MR. BROOKS: No, I didn't say it was sort
5 of familiar. I said that it was an indication
6 that you knew what was going on in terms of
7 my conversations with you. Just like you
8 knew what was going on based on my conversations
9 with you as it relates to this case.

10 MS. RICHARDSON: Right. Uh-huh (affirmative
11 response). You -- you -- you know that I gave
12 you all the information; I told you everything.

13 MR. BROOKS: Well, when you first came in
14 to see me, you brought me your file to give me
15 on the case. That's correct. I didn't get
16 everything otherwise except, as a practical
17 matter, there are times when people bring you
18 stuff, but they may not be bringing you all
19 of the stuff. So, the best thing to do as a
20 prudent and diligent lawyer is, in this case,
21 contact the Workers' Comp Commission, and I
22 obtained the entire file so that I could be
23 strategically armed to deal with somebody
24 that ---

25 MS. RICHARDSON: Do you -- do you -- do

1 we have that file on hand? I never -- I
2 never received it from you.

3 MR. BROOKS: You -- I have given you
4 everything. Everything.

5 MS. RICHARDSON: You didn't -- the only
6 thing you gave me was ---

7 MR. BROOKS: I have given you everything
8 on your case, Ms. Richardson. Believe me.

9 MS. RICHARDSON: What file ---

10 MR. BROOKS: Everything.

11 MS. RICHARDSON: What file did you receive
12 from the Commission?

13 MR. BROOKS: Whatever they sent me that
14 related to this case and I have given you a
15 copy of that and a copy of everything you
16 gave me. You have everything as relates to
17 your case.

18 MS. RICHARDSON: So, how ---

19 MR. BROOKS: Everything.

20 MS. RICHARDSON: When you say a file, how
21 many -- how many papers ---

22 MR. BROOKS: Ma'am, whatever they sent me,
23 you got. I gave you everything. Everything.

24 MS. RICHARDSON: Okay. When you say
25 everything, ---

1 MR. BROOKS: Everything.

2 MS. RICHARDSON: -- what that includes?

3 MR. BROOKS: It includes Form 50's,
4 everything they had on file that maybe Mr.
5 Crosland had filed, any documentations that
6 they had; you had given me stuff that you had.
7 I -- and I've given everything to you. When
8 you said, "I want a copy of my file," I gave
9 everything to you. You got all of it.

10 Q. Okay. I'm going to ask one final question and then
11 I'm going to turn it over to Ms. Richardson. Mr.
12 Brooks, in your dealings with Ms. Richardson, both
13 when your representation started before our mediation,
14 your handling of her Lowe's slip and fall, your
15 attendance with her at the mediation, your receipt and
16 review on December 5th, 2014 of the Clincher Agreement
17 and the associated documents, during that time and
18 even up to now, did you ever get the impression or the
19 sense, based upon anything that she said or did, that
20 she was incapable of handling her affairs, of
21 understanding the issues that were put in her Workers'
22 Compensation claim or of understanding the process of
23 prosecuting and settling her claim?

24 A. No. She was, -- you know, she was more-so than any
25 other client -- she was heavily involved in her case.

1 As she described, she brought me the documents. She,
2 you know, came in, and she was not a client that I had
3 to kind of track down -- where I've had clients in the
4 past that maybe come in and you've got to, you know,
5 go find them when it's time where you've got some
6 money and negotiations. Stella was hands-on. She
7 would call or she would come in. She would call; she
8 would come in. She'd drive -- she'd drive herself
9 here. She would walk in, talk to me, my assistant,
10 Sherry Wharton, other ladies in the office because she
11 had -- she was -- she was a hands-on person in her
12 case. She was in her case.

13 MS. RICHARDSON: But I didn't know
14 the process of the case. That's why I
15 came to you.

16 A. I mean, and -- and when I say she was hands on, she
17 was at the table, she was discussing it and never gave
18 me any impression that she didn't understand any of
19 our conversations or when we got to the mediations,
20 never gave the impression that she didn't understand
21 my conversation or Mr. Gallivan's conversation.

22 Q. You mentioned Sherry. Is it Wharton?

23 A. Sherry Wharton.

24 Q. What kind of communication or correspondence did Ms.
25 Warren have with Ms. Richardson, to the best of your

1 knowledge?

2 A. Over the phone. Like, she would call because there
3 was a point in time where we were waiting on that
4 check, and she would call and Sherry would say, "Hey,
5 I'll check on it for you, I know you're trying to get
6 this check." It was getting close to Christmas.
7 Sherry was contacting Donna in your office. And it
8 got to the point where Sherry would say, "Hey, Donna,
9 this is Sherry." She ain't got to say -- this is
10 Sherry from Charles Brooks' office. Donna in your
11 office knew when Sherry called, you know what it's
12 about. And Donna would say, "Hey, we haven't got a
13 check, we haven't got a check, we haven't got a
14 check." And like I said, there was a point when you
15 got the check, and I know you probably don't remember
16 this because you handle tons of other cases, but I
17 remember you overnighting the check ---

18 Q. Did ---

19 A. -- because we were continuously calling because she
20 was continuously calling about it.

21 Q. Did -- did Donna or anyone in my office ever tell you
22 or Ms. Wharton why we wouldn't send the check before
23 the Clincher was approved?

24 A. The only thing that I do remember is you saying they
25 were not going to do that until everything was done.

1 Q. Okay. So, ---

2 A. Okay. Now, the why I can't necessarily remember if,
3 you know, there were any specifics as to why. I
4 couldn't understand. I could speculate, okay, but I
5 don't want -- if you said to me -- this is why, other
6 than this was the course of dealings that this company
7 wanted to go with. Or this is how they ---

8 Q. I just want to just state for the record for the
9 benefit of all parties, that that is a policy of
10 Mitsui Sumitomo in these cases, and the reason they
11 started that is because a number of claimants and I
12 mean maybe more than fifteen (15), maybe more than
13 that, would settle their cases and we would send the
14 check and the Clincher to the Steinberg Law Firm and
15 it would sit; it would sit for a month or two months.
16 Great. After six months, the checks are stale. Okay.
17 So, we would have to -- we, meaning Mitsui would have
18 to go back -- we'd have to get the checks back.

19 A. And reissue them. Okay.

20 Q. And a few of them, escheated to the State, and I know
21 Mr. Brooks knows what that means.

22 A. Okay.

23 Q. The State has an unclaimed property law, okay, and
24 that is unbelievable; so, that is when we instituted
25 that policy, we said, -- all right, fine, we're going

1 to settle the cases, we're not going to issue the
2 checks until they take the time to get the Clincher
3 approved, get it signed.

4 A. I got you.

5 Q. So, that's just for the record; that's why we did
6 that. It had nothing to do with you or with you.

7 (Indicates Ms. Richardson and Mr. Brooks). It was
8 just the course of dealing and getting burned.

9 A. And I -- I never realized that, but I can totally
10 understand that. So, when you communicated that to
11 me, that's the only reason why I had the POA because
12 I knew there was going to be some lag time. Then is
13 it going to be a situation where the bank is going to
14 hold -- that's the only reason we did that. So, ---

15 MR. GRUBER: I don't have any
16 further questions for Mr. Brooks at
17 this time, Ms. Richardson.

18 EXAMINATION BY MS. RICHARDSON:

19 Q. Okay. With the Form 19, I don't quite understand
20 that. Could you tell me on Form 19 what the purpose
21 of that signing of that form?

22 A. That's a form that was sent by Mr. Gruber and his --
23 his clients, I believe Mr. Gruber pronounced it
24 Mitsui.

25 MR. GRUBER: Mitsui Sumitomo. Yes.

1 A. I will just say Great American because -- just in case
2 I mispronounce the name.

3 Q. Okay. So, so, ---

4 A. But that was one of the forms that came with the
5 Clincher ---

6 Q. Okay.

7 A. -- they required, but that's nothing unusual.

8 Q. I just -- I just want to know what is the procedure --
9 December 5th, I received a check, but the Order of the
10 Approval of the Clincher wasn't until December 10th.

11 A. You didn't receive the check on December 5th because
12 they hadn't issued the check on December 5th.

13 Q. What -- okay.

14 A. You signed the Form 61 ---

15 Q. I signed ---

16 A. -- along with ---

17 Q. Yeah.

18 A. The Form 61 was a breakdown of the fees and costs in
19 your case, and the Clincher was the document.

20 Q. But I got -- I got the check before I got the Clincher
21 Agreement.

22 A. No, no, no, no. You signed the Clincher Agreement.
23 You signed all these documents on December 5th. Now,
24 you came back and said -- after you got the check, you
25 said, "Hey, I want to get a copy of everything" I

1 signed," and we gave you a copy of everything you
2 signed.

3 Q. No, you didn't.

4 A. Oh, yes, I did.

5 Q. Uh-uh (negative response). You ---

6 A. Do you have any other questions?

7 Q. I didn't -- I didn't sign the -- the Clincher -- I
8 didn't sign ---

9 A. Ms. Richardson, ---

10 Q. -- the Order.

11 A. -- do you -- do you have any other questions?

12 Q. I didn't sign the -- I got the check and then I got
13 the Order.

14 A. Okay. Do you have any other ---

15 Q. But you told me that I had so much money going to be
16 set aside for me, and when I came down with breast
17 cancer, I thought I would had so much money set aside
18 for me for -- for health -- for Medicare, and then I
19 want to know why in this Form here did you put me down
20 that I didn't reside in Sumter County any more?

21 A. Ma'am -- ma'am, that might have been -- at the top of
22 that form, that may have been a form we do with
23 clients that might not have been local. The whole
24 point of that form was just to specifically get your
25 permission to make sure we can get that money into the

1 account so that we could deal with any holds that the
2 bank may or may not put on the check. That's the only
3 reason we did it. So, whether or not you lived in
4 Sumter County or lived in Oconee County ---

5 Q. So, it's right -- it's right to put down on a form?

6 A. If it -- it was right because the main thing we wanted
7 to make sure was we had your permission to do that.
8 That's all.

9 Q. Even though you lied that ---

10 A. I didn't -- ma'am, ---

11 Q. Because I always live in Sumter County.

12 A. Okay. Ma'am, have you got any other questions?

13 Q. I just want you to respect me.

14 A. Do you have any other questions?

15 Q. I -- I want ---

16 A. I've answered your questions to the best of my
17 knowledge.

18 Q. Okay. Why did you put down on here that I lived --
19 don't live in -- reside in Sumter County?

20 A. And that may have actually been a clerical error, but
21 as I indicated to you before, the whole issue was to
22 make sure we had your permission to get that check so
23 we wouldn't have to deal with any holds. And that's
24 what the gist of that document did.

25 Q. Okay.

1 A. Do you have any other questions?

2 Q. No, that's it for me.

3 A. Okay.

4 MR. BROOKS: (To Mr. Gruber) Have
5 you got anything, Robert?

6 MR. GRUBER: I don't think I do.

7 MR. BROOKS: That concludes the
8 deposition.

9 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS
10 CONCLUDED AT 12:20 P.M.).
11

Stella Mae Richardson,
Claimant,

vs.

Yuasa Exide, Inc.,
Employer,

Great American Insurance Company of
NY,
Carrier,
Defendants.

STATEMENT OF THE CASE

The parties attended mediation before H. Mills Gallivan on October 31, 2014 and settled this case on a clincher for \$20,000.00. Mr. Gallivan submitted his Form 70 Mediation

Report on November 3, 2014 and the parties entered a clincher agreement which was approved by the Commission on December 10, 2014 (attached).

Mr. Brooks submitted a Motion to be Relieved as Counsel in this matter which was granted on June 3, 2015. The claimant filed a Pro Se Form 50 on June 18, 2015 alleging an illness due to invasive ductal carcinoma (breast cancer) and requested compensation for total disability and medical care and treatment. The employer/carrier timely filed a Form 51 alleging that the claimant's breast cancer was not causally related to her alleged injury/exposure and also alleging every available defense (affirmative and otherwise) available under the South Carolina Workers' Compensation Act and specifically the occupational disease portion of the statute. Most importantly, however, the employer/carrier alleged that the claimant had clinchered her case on December 10, 2014 and that the claimant, therefore, was not entitled to any further benefits whatsoever pursuant to the terms of the claimant agreement. On June 30, 2015, the Workers' Compensation Commission scheduled a hearing before Honorable Mike Campbell for August 10, 2015 in Sumter, South Carolina. The claimant appeared *pro se* and the employer carrier appeared and was represented by Robert Gruber. Commissioner Campbell reviewed the Commission's file and the clincher agreement, which the Commission approved on December 10, 2014. The claimant did not submit any exhibits and, notably, did not submit any evidence linking or associating her breast cancer to her alleged workplace exposures, nor did she submit any evidence of fraud, deceit or any other type of inducement to settle her claim. Commissioner Campbell ruled as a matter of law that the claimant had fully and finally settled her case on December 10, 2014, and that it could not be re-opened. Commissioner Campbell issued his Order dated December 7, 2015 denying the claimant's request to re-open her claim for additional benefits.

The claimant appealed Commissioner Campbell's Order via Form 30 filed on December 21, 2015 (oral argument *not* requested). The claimant then filed a Form 59 Appellant's brief on February 1, 2016.

STATEMENT OF THE FACTS

The undisputed facts as reflected in the Commission's file are that the claimant has had two (2) attorneys during the course of this claim--the most recent from April 3, 2014 until June 3, 2015. She and her attorney agreed to mediation and attended mediation on October 31, 2014 with H. Mills Gallivan as mediator. The claimant was present for this mediation. The parties agreed at the mediation to clincher the claimant's case for Twenty thousand and no/100s (\$20,000.00) Dollars, as reflected by the mediators F70 filed on November 3, 2014. The parties prepared and executed a clincher agreement which was approved by the Commission on December 10, 2014¹. Finally, the claimant filed a F50 requesting additional benefits on June 18, 2015—almost eight (8) months post clincher. None of these facts are in dispute and the claimant has at no time alleged that her settlement was not voluntary.

ARGUMENTS PRESENTED

A Single Commissioner's award may not rest on "surmise, conjecture, or speculation; it must be founded on evidence of sufficient substance to afford it a reasonable basis." Linen v. Ruscon Construction Co., 286 S.C. 67, 70, 332 S.E. 2d 211, 212 (1985). In the present case, the Single Commissioner's decision is clearly founded on and supported by the great weight of the substantial evidence in the record and, accordingly, must be affirmed. Factual findings will be upheld on appeal where there is substantial evidence to support them. Jones v. BMG Distribution, Inc., 318 S.C. 359, 458 S.E.2d 35 (1995). Substantial evidence is the evidence that will allow reasonable minds to reach the same conclusion the commission reached when considering the record as a whole. Id. Substantial evidence clearly exists in the present case to support the Single Commissioner's findings and, thus, the decision must be affirmed. More importantly, it is only

¹ Clincher agreement is attached.

logical for the Full Commission to give weight to the Single Commissioner's decision based upon the fact that it does not have the opportunity or benefit of observing the witnesses, as does the Single Commissioner. Green v. Raybestos - Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967). In the present case, the Hearing Commissioner's decision is supported by the great weight of the medical and other evidence in the record, and must be affirmed in its entirety.

**I. COMMISSIONER CAMPBELL PROPERLY CONSIDERED THE LAW
AND THE RELAVANT FACTS IN HIS DECISION TO DENY
CLAIMANT'S REQUEST FOR ADDITIONAL BENEFITS AND HIS
FINDINGS ARE CORRECT AS A MATTER OF LAW**

1. The claimant's settlement of her case was negotiated with counsel, under the aegis of mediation and was entirely voluntary

Under South Carolina Workers' Compensation Law, employees and employers are permitted to voluntarily settle an existing workers' compensation claim "so long as the time and manner of payment are in accordance with the provisions of this title." S.C. Code Ann §42-9-390. A "clincher agreement" is a full and final settlement agreement that "relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses." S.C.Code Ann. Reg. 67-801E (1990). Once a clincher is approved by the Commission, "the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document." Id.

The facts as reflected in the Commission's file prove unequivocally that the claimant voluntarily settled her claim, and that she did so with ample time and the benefit of counsel. The body of the clincher agreement states that the claimant, in exchange for the sum of Twenty Thousand and no/100s (\$20,000.00) Dollars gives up her rights to any additional benefits provided by the S.C. Workers Compensation Act, including those for indemnity or medical care and treatment, past present and future. Finally, the clincher agreement states that

the claimant had been advised of her rights, that she entered into the clincher agreement freely and that she understood that the agreement would end any rights she had to further benefits from this claim or any other workers' compensation claim she may have against the employee. The claimant did not appeal the clincher of this case; hence, the clincher is the law of the case. Finally, the claimant filed a F50 requesting additional benefits on June 18, 2015—almost eight (8) months post clincher. None of these facts are in dispute and the claimant has at no time alleged that her settlement was not voluntary. Therefore, the clincher agreement is the law of this case and the claimant cannot receive additional benefits beyond the Twenty Thousand and no/100s (\$20,000.00) Dollars that she received.

2. The claimant has not alleged any reason for the Commission to re-open her claim

The appeal of Commissioner Campbell's Order is the issue in this appeal; however, claimant's F30 and F59 speak to the circumstances surrounding her decision to clincher her case back in October of 2014. Therefore, the employer carrier responds to the claimant's specific allegations regarding her decision to clincher her claim.

The claimant suggests in her F59 that she did not understand the process and/or that she was confused regarding her actions, that she does not comprehend well and that she cannot concentrate². Claimant's allegations most nearly resemble an argument that the employer/carrier is equitably estopped to deny additional benefits to the claimant. The claimant has not presented any evidence supporting a claim of equitable estoppel.

Courts apply the doctrine of equitable estoppel when one party, "by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct.App.2006) (quoting Hubbard v. Beverly, 197 S.C. 476, 480,

² Claimant's F59 and attachments are attached.

15 S.E.2d 740, 741 (1941)). For equitable estoppel to apply, each party must meet the following criteria:

With regard to the party estopped, the elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts.

As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position. *Id.* at 293-94, 633 S.E.2d at 924 (internal citations and quotations omitted).

A court will not rescind a contract solely on the basis of unilateral mistake unless the party opposing rescission induced the mistake "by fraud, deceit, misrepresentation, concealment, or imposition ..., without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement." Truck South, Inc. v. Patel, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000). Therefore, even if the claimant can prove that she lacked knowledge of the truth, that she relied upon the employer/carrier's conduct and that she prejudicially changed her position based upon the employer/carrier's conduct, she still must prove that the employer/carrier induced her to settle her claim through fraud, deceit or some type of misrepresentation.

The claimant has produced no evidence (nor has she alleged) that the employer/carrier induced her in any way to settle her claim or that her decision to settle her claim was based upon the concealment of any material facts or omissions of the same. To the contrary, the facts of this case demonstrate that the claimant had ample opportunity to seek additional benefits prior to her settlement, and that she had ample resources from which to educate herself on the ways of the workers' compensation system and the benefits available to her as claimant. She availed herself of these resources and decided to settle her claim, and she must be bound by

the terms of the settlement agreement that she and her lawyer negotiated on October 31, 2014 at mediation, and which the Commission approved on December 10, 2014.

CONCLUSION

The claimant filed a claim and, with advice of counsel and the assistant of a mediator, settled her claim with a full and final clincher. This clincher agreement state's unequivocally that the claimant agreed and intended to release all of her present and future right or rights to benefits under the S.C. Worker's Compensation Act in exchange for Twenty Thousand and no/100s (\$20,000.00) Dollars. The claimant executed the clincher, accepted the money and the Commission approved this clincher agreement on December 10, 2014. Finally, the claimant has offered no evidence that this agreement was procured under fraud, deceit or duress; therefore, the claimant has no further right to benefits under the statute for this or any other claim she may have against the employer/carrier, and the Commission should affirm Commissioner Campbell's Order.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____
Robert Gruber
P. O. Box 993
Charleston, South Carolina 29401-0993
Phone: (843) 720-5482
Fax: (843) 579-2933
Email: rgruber@ycrlaw.com

Charleston, South Carolina

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CLAIMANT: STELLA RICHARDSON

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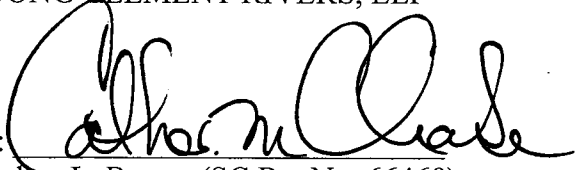
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SUPPROA 138

The undersigned hereby certifies that this *Supplemental Record on Appeal* contains all material proposed to be included by any of the parties and not any other material. Additionally, the undersigned hereby certifies that this *Supplemental Record on Appeal* complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Stephen L. Brown (SC Bar No. 66468)

Robert P. Gruber (SC Bar No. 15581)

Catherine H. Chase (SC Bar No. 74593)

25 Calhoun Street, Suite 400 (29401)

P.O. Box 993

Charleston, South Carolina 29402

(843) 720-5488

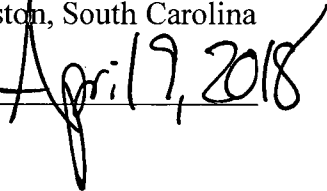
sbrown@ycrlaw.com

rgruber@ycrlaw.com

cchase@ycrlaw.com

Attorneys for Yuasa Exide, Inc.

Charleston, South Carolina

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